

Opinion No. 214.

**Election—School Election—Absent
Voter's Ballot—Bond Election.**

Held: An absent voter's ballot for a school district bond election has not been authorized by our legislature and therefore the only ballots which may be counted at such election are those cast by qualified electors who are present at the polls and vote in person.

October 30, 1946.

Mr. R. T. Delaney
County Attorney
Lake County
Polson, Montana

Dear Mr. Delaney:

You have requested my opinion concerning the right of a qualified elector to vote by absent ballot in a special school district bond election. You advise me that the special election will be held on the same day as the general election.

Section 715, Revised Codes of Montana, 1935, as amended by Chapter 234, Laws of 1943, provides:

"Any qualified elector of this state, having complied with the laws in regard to registration, who is absent from the county or who is physically incapacitated from attending the precinct poll of which he is an elector on the day of holding any **general** or **special** election, or primary election for the nomination of candidates for such **general** election, or any **municipal**, **general**, **special** or primary election, may vote at such election as hereinafter provided." (Emphasis mine.)

The above quoted section would seemingly grant the authority and right to a qualified elector to vote by absent voter's ballot at a school bond election as it would be a special election.

However, Section 716, Revised Codes of Montana, 1935, as amended by Chapter 234, Laws of 1943, provides that those who are eligible to such absent voter's ballot "may make application to the **county clerk** of such county, or to the **city or town clerk**, in the case of a municipal, general, or primary election, for an official ballot or official ballots to be voted at such election as an absent or physically incapacitated voter's ballot or ballots."

It is to be noted that the application is made to the county clerk, or to the city or town clerk, and no mention is made of the clerk of the school district, and this becomes important when it is observed that the county clerk has the ballots printed for county wide election (Section 678, Revised Codes of Montana, 1935, as amended) and the city clerk has the ballots printed for municipal elections (Section 679, Revised Codes of Montana, 1935). Section 1224.11, Revised Codes of Montana, 1935, as amended by Chapter 178, Laws of 1939, states "the school district clerk shall cause ballots to be prepared for all such bond elections . . ." The conclusion to be drawn is that the application for an absent voter's ballot is addressed to the clerk having custody of the ballots and as the school district clerk is not mentioned, no such application can be made to him.

All of the sections pertaining to absentee voting mention the county and city or town clerk, but do not name the school clerk who is the custodian of the bond election ballots. Section 989, Revised Codes of Montana, 1935, provides that the general election laws

do not apply to school elections, and this would suggest that the legislative intent was not to include school elections within the absent voter's law.

It is therefore my opinion that an absent voter's ballot for a school district bond election has not been authorized by our legislature and therefore the only ballots which may be counted at such election are those cast by qualified electors who are present at the polls and vote in person.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General