

Opinion No. 23.

Special Elections—Ballots—Registration Under Chapter 28, Laws of 1945.

Held: There should be two separate and distinct ballots prepared and used, one for each of the separate special elections in each county of the second congressional district. The time for closing registration for this particular election is noon of May 6, 1945.

March 24, 1945.

Mr. Sam W. Mitchell
Secretary of State
State Capitol
Helena, Montana

You have submitted the following questions for my opinion:

“Section 4 of Chapter 149, Laws of 1945, directs the county clerk and recorder to print the ballot for Referendum 49 (The 1945 Highway Debenture Act) in the form prescribed therein. The Governor has by his proclamation of March 7, 1945, called a special election for June 5th for the purpose of filling the vacancy caused by the death of James F. O’Conor. Will you kindly advise me as to whether, in certifying the Highway Debenture Act and the candidates for office in the second congressional district, I may combine both issues on the ballot prescribed by Section

681, Revised Codes of Montana, 1935, or should a separate ballot be used for each question?

"May I also have your opinion as to when the registration shall close under the provisions of Senate Bill 13 (Chapter 28, Laws of 1945), the thirty day closing limitation falling on Sunday, May 6th?"

In answering your first question, it is to be noted there are two separate and distinct special elections, each to be held on the same day, that is June 5, 1945.

There will be many more electors qualified to vote for a congressional candidate or candidates than will be qualified to vote on Referendum No. 49. Section 2 of Chapter 28, Laws of 1945, requires the poll books for the special election on the referendum shall contain only the names of electors qualified to vote on such question, that is, "registered electors, residing within the state, and who are taxpayers upon property therein, and whose names appear upon the last completed assessment roll of some county of the state, for state, county and school district taxes . . ." This being a special act for specific purposes, it controls the matters therein covered. Electors qualified to vote on congressional candidates may not be qualified to vote on the referendum, and hence could not vote such ballot. For the foregoing reasons, it is my opinion there should be two separate special elections in each county of the second congressional district.

Answering your second question as to when the registration shall close under the provisions of Chapter 28, Laws of 1945, and Chapter 149, Laws of 1945, it will be noted that Section 1 of Chapter 149, Laws of 1945, sets the date of the special election to be held on Tuesday, June 5, 1945. Under Section 1 of Chapter 28, Laws of 1945, it is provided that at all elections at which the question submitted is the incurring of a state debt, the issuance of bonds or debentures by the state, . . . whenever any such question is to be submitted at an election, other than a general biennial state election, the county clerk of each county must cause to be published one time in the official newspaper of the county a notice, signed by him, stating that registration will close at noon on the thirtieth day prior to the date for holding of the

election at which the question is to be submitted . . .

Excluding the day of election, June 5, 1945, and counting back to the thirtieth day prior to the date for holding the election, we find that under the terms of the act, the time of closing the registration is noon of May 6, 1945, which falls on Sunday.

The question has arisen if the registrations are taken in the forenoon of May 6, being Sunday, which is a holiday, would it be legal, or if Section 12 of Section 10757, Revised Codes of Montana, 1935, would apply.

Section 1 of Chapter 28, Laws of 1945, specifically directs the county clerk of each county to close the registration in this particular kind of an election at noon on the thirtieth day prior to the date of election. The mere fact that an act is to be performed on Sunday does not invalidate it.

"There is no prohibition against the performance of any public act on Sunday, as such. Any of the enumerated acts may be done lawfully on a holiday . . ." (State ex rel. Hay v. Alderson, 49 Mont. 387, 410, 142 Pac. 210.)

Our Supreme Court had a similar question under consideration in State ex rel. Beavan v. Mountjoy, 82 Mont. 594, 268 Pac. 558, in which the court states:

"In our opinion the language of these enactments is plain, unambiguous, direct and certain, and speaks for itself without the necessity of resort to interpretation. Therefore reference to elementary principles of statutory construction becomes wholly unnecessary. (Chmielewska v. Butte & Superior Min. Co., 81 Mont. 36, 261 Pac. 616). In clear and unequivocal language such nominating petitions must be filed with the secretary of state 'not less than forty days before the date of the primary election'. Thirty-nine days before will not suffice, and those filed less than forty days before the election are manifestly without validity under the plain language of the statute."

And again:

"The language of the statute is exclusive, and section 10707, Revised Codes of 1921, providing that 'the time in which any act provided by

law is to be done is computed by excluding the first day and including the last', etc., relied upon by the learned counsel appearing in support of the secretary of state's position, is without application. (State ex rel. St. George v. Justice Court, 80 Mont. 53, 257 Pac. 1034.) As the act here required must be done at least forty days before the date of the primary election, which is July 17 this year, it is manifest that July 17 cannot be included in computation of the forty-day period. The statute says it must be prior to the date of election, July 17, and forty days before July 17 would be June 6, as full days are required . . ." (Emphasis mine.)

Again the court stated:

"The office hours of the secretary of state are from 9 o'clock in the morning until 5 o'clock in the afternoon of every business day, and at other times when the accommodation of the public or the proper transaction of business requires." (Sec. 453, Rev. Codes 1921.) He may, if he sees fit, transact business in his office at any time during the twenty-four hours. He could certify a nomination within the first hour, or indeed upon the first moment, of June 7, had he desired to do so. If he had forty days before July 17 in which to certify the nominations, this necessarily must be so. Consequently, if the secretary of state has the right to certify the nominations on the morning of June 7, the filing of nominations must be completed in his office on or before June 6; which is a clear and unmistakable indication that it was intended by the legislature that the nominations which must be filed in the office of the secretary of state must be filed therein forty clear days before the date of the primary election. Any other construction would fritter away the clear meaning and intent of what appears to us to be plain language. The statute is mandatory, and a petition for nomination offered for filing after the time prescribed is of no force or effect,—it is invalid. (State ex rel. Galen v. Hays, 31 Mont. 227, 78 Pac. 301.)" (Emphasis mine.)

It is necessary to give to the act the intention of the legislature in its enactment. An interpretation whereby the registration would be closed at noon on

Monday, May 7, would not give the time required by the section, and closing the registration at noon on Saturday, May 5th, would deprive voters of their right under the act to register Saturday afternoon, May 5th, and the forenoon of Sunday, May 6th.

It is assumed the county clerks will comply with the requirements of the legislature in this enactment, and Section 453, Revised Codes of Montana, 1935, which is in part as follows:

"Unless otherwise provided by law, every officer must keep his office open for the transaction of business continuously from 9:00 A. M. until 5:00 P. M. each day, and at other times when the accommodation of the public or the proper transaction of business requires . . ." (Emphasis mine.)

It is therefore my opinion the time for closing registration for this particular election is noon of May 6, 1945.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General