

Opinion No. 37

**Elections—General, special defined—
Polls, hours when to be kept open.**

Held: The hours during which the polls shall be open in Missoula County and in every other county of the state, insofar as the election on the State Debenture Act is concerned, shall be as provided by Section 689, Revised Codes of Montana, 1935.

Mr. Oskar O. Lympus
County Attorney
Missoula County
Missoula, Montana

Dear Mr. Lympus:

You have requested my opinion as to the hours during which the polls should

be open in Missoula County for the special state election on June 5, 1945. I presume you refer to the election called under the provisions of Chapter 149, Laws of 1945, known as the "State Highway Treasury Anticipation Debenture Act of 1945."

Section 1 of Chapter 149, Laws of 1945, provides in part as follows:

" . . . shall be and is hereby submitted to the electors of the State of Montana qualified to vote thereon at a special election hereby called to be held on Tuesday, the 5th day of June, 1945, for their approval or disapproval by a majority vote."

And Section 5 of the act provides in part as follows:

"All of the laws of this state governing and controlling the registration of electors, preparing of lists of registered electors, poll books, and ballots, insofar as the same are applicable thereto and not in conflict with any of the provisions of this act, shall apply to, govern and control such special election . . ."

The act further provides the counting, canvassing and determination of the vote shall be as provided by the general election laws of the state. It does not, however, provide the time when the polls shall be opened and closed.

Our Supreme Court, in the case of *Arps v. State Highway Commission*, 90 Mont. 152, 162, 300 Pac. 549, in considering provisions of Chapter 95, Laws of 1931, an act very similar to Chapter 149, supra, held that the election at which the debentures were there submitted under like provisions as quoted above, was a general election. Our court, in that case, in holding that the election was a general election, as distinguished from a special election, adopted the definition of the Oregon Supreme Court in the case of *Bethune v. Fund*, 85 Ore. 246, 166 Pac. 931, 932, as follows:

"(A general election) is one that regularly recurs in each election precinct of the state on a day designated by law for the selection of officers, or is held in such entire territory pursuant to an enactment specifying a single day for the ratification or rejection of one or more measures submitted to the people by the legislative assembly, and not for the election of any officer . . . for the election having

been simultaneously held in every voting precinct of the state conclusively establishes the fact that the election was 'general', and not 'special', which latter term, though not involved herein, would appear to mean an election held in only a subdivision or a part of the state." (Emphasis mine.)

It is true in the act under consideration by the Supreme Court in the case cited, in submitting the question to the electors, used the term "general election" instead of "special election," as in Chapter 149, Laws of 1945, yet I am of the opinion under the definition above quoted, the election to be held on June 5, 1945, is a general election.

In the absence of any specific provision for the hours when the polls shall be kept open in the special act under which this election is held, we must find the authority in some other provision of the codes if possible.

Section 2 of Chapter 28, Laws of 1945, which is an act dealing with all elections at which the question submitted is the incurring of a state debt, the issuance of bonds or debentures of the state, other than refunding bonds or debentures of the state, other than refunding bonds or debentures, or the levying of a state tax for any purpose, provides among other things as follows:

" . . . All the laws of this state applying to the holding of general biennial state elections, insofar as applicable thereto and not in conflict with any of the provisions of this act, shall apply to and govern and control such election . . ."

Section 689, Revised Codes of Montana, 1935, which is a part of the general election laws of the state, provides:

"The polls must be opened at eight o'clock on the morning of the election day and must be kept open continuously until six o'clock in the afternoon of said day, when the same must be closed; provided that in precincts having less than one hundred (100) registered electors the polls must be opened at one o'clock in the afternoon of election day and must be kept open continuously until six o'clock in the afternoon of said day, when they must be closed; provided, further, that whenever all registered

electors in any precinct have voted, the polls shall be immediately closed.”

It is therefore my opinion the hours during which the polls shall be open in Missoula County and in every other county of the state, insofar as the election on the State Debenture Act is concerned, shall be as provided by Section 689, Revised Codes of Montana, 1935.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General