

Opinion No. 129**Poll Books—Ballot—Electors—County
Clerk and Recorder, Duty of**

Held: 1. It is the duty of the county clerk to provide separate poll books for each precinct in his county, which poll books shall contain only the names of the electors qualified to vote on referendums at an election.

2. The ballots for referendums must be numbered as required by the provisions of Section 684, Revised Codes of Montana, 1935.

July 31, 1948

Hon. Sam W. Mitchell
Secretary of State
Capitol Building
Helena, Montana

Dear Mr. Mitchell:

You have submitted to me the following:

In the coming general election to be held on November 2, 1948, at which

election Referendums No. 51 and No. 52 will be submitted to the people, is it required that separate poll books be prepared by the county clerk and ex-officia recorder of each county, such poll books containing only the names of the voters qualified to vote on said referendums?

In answering the foregoing question I call your attention to Chapter 67, Laws of 1947; Section 1 thereof, as far as pertinent herein, states:

"Any measure proposed to be submitted to the people and which concerns the creation of any state levy, debt or liability, or including the issuance of state bonds or debentures, shall be submitted to the eligible voters as defined by section 1, chapter 28, session laws of Montana, 1945, upon a separate ballot and no such measure shall be submitted on a general ballot."

Section 1 of Chapter 28, Laws of 1945, sets forth the qualifications of electors at such elections for incurring a state debt or for the levying of a state tax for any purpose; sets forth the requirement of the giving of notice of closing of registration by the county clerk, as for a general election. Section 2 of Chapter 28, Laws of 1945, provides insofar as pertinent here, as follows:

"After closing of registration the county clerk of each county shall promptly prepare lists of registered electors of all voting precincts in his county who are qualified to vote on the question to be submitted at such election, and shall prepare poll books for such election generally in the manner provided by Section 568, Revised Codes of Montana, 1935, except that such poll books shall contain only the names of the electors qualified to vote on such question at such election, and deliver the same to the judges of election prior to the opening of the polls, and except that shall not be necessary to print or post such lists of registered electors." (Emphasis supplied).

From the foregoing language it will be observed the legislature has, by mandatory language, made it the duty of the county clerk to provide separate poll books for each precinct in his county, which poll books shall

contain only the names of the electors qualified to vote on such question at such election.

In your second question you inquire whether or not the separate official ballot on the referendums must carry a stub and on the back thereof be printed or stamped with a number.

In answering this question we should refer again to the last sentence of Section 2 of Chapter 28, Laws of 1945, which reads as follows:

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

Section 684, Revised Codes of Montana, 1935, provides for the stub, the size thereof and the instructions to the voter, and further provides:

"In cases of a ballot containing a constitutional amendment, or other question to be submitted to a vote of the people, by marking an 'X' in the square before the answer of the question or amendment submitted. . . ."

"On the back of the stub shall be printed or stamped by the county clerk, or other officer whose duty it is to provide the ballots, the consecutive number of the ballot, beginning with number '1,' and increasing in regular numerical order to the total number of ballots required for the precinct." (Emphasis supplied).

It is, therefore, my opinion the ballots for such referendums must be numbered as required by the above provision of Section 684, Revised Codes of Montana, 1935.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General