

## Opinion No. 148

**Elections, Municipal—Nomination—  
Municipal, Incorporation.**

**Held:** That the two methods available for the nomination of candidates are: the first, which is provided by Section 612 of the code, is the convention or a primary meeting; and the second, provided for by Section 615, is through the use of certificates of nomination signed by at least a required percentage of voters. The time limit within which any nomination petition may be filed with the county clerk, as must be done before this first municipal election, extends over the period included in the time between sixty and thirty days preceding the election."

November 26, 1948

Mr. Walter T. Murphy  
County Attorney  
Mineral County  
Superior, Montana

Dear Mr. Murphy:

You have submitted for my opinion the following questions:

1. How many officers to be at the first election in a town be nominated?
2. What is the time limit within which nominating petitions must be filed?"

The first of these questions must be answered as follows:

Section 4963 of the R.C.M. of 1935 and Section 4964 provide respectively for the first election for officers of a newly incorporated town and for the offices to which officers must be elected. There is no express provision in the 1935 code nor in the subsequent session laws which have been enacted by the state legislature for the nomination of these officers to be elected at the first town election. It is interesting to note however, that the following is provided in Section 4964:

"The persons so elected must qualify in the manner prescribed by

law for county officers." And again, it is stated that: "The election must be conducted in the manner required by law for the election of county officers."

Since there is no specific statute of the state dealing with the nomination of the officers to be elected at the first election in a town that has just been incorporated, it is necessary to examine generally the statutes dealing with the question of nomination.

Chapter 64 of the Political Code of the RCM of 1935, embracing Sections 612 through 630, as amended by Chapter 104 and Chapter 105 of the 1943 Session Laws, by Chapter 26 and Chapter 143 of the 1945 Session Laws, and by Chapter 259 of the 1947 Session Laws, covers this subject. With particular reference to the question herein involved, it is important to examine only one of these in detail. The remainder deal with the problem of voting military personnel who were absent from the state during the recent war.

The two methods available for the nomination of candidates are: the first, which is provided by Section 612 of the code, is the convention or a primary meeting; and the second, provided for by Section 615, is through the use of certificates of nomination signed by at least a required percentage of voters.

The first of these, nominated by party convention, requires that there be "A convention or primary meeting . . . (which) is an organized assemblage of electors or delegates representing a political party or principle." This method of nomination may be followed in the first election of this new municipality because the election is to be governed and conducted according to the manner required by law for the election of county officers. Since this county has been in existence for many years and may be shown to have regular political parties, the parties may nominate, through convention or primary meeting, candidates for the various offices.

The second method as provided for by Section 615 RCM 1935, calls for certificates of nomination through the

use of certificates signed by at least five per cent of the number of votes cast for the successful candidate for the same office at the next preceding election. In an election of this nature, where there has never been a preceding election for any of the offices which now must be filled, the question arises as to what number must the required five percent be related? Since this election should reflect the will of the voters in selecting their officers, and since the persons designated by party convention may not meet with the desires of a majority of the voters, it is important that the right to nominate independent candidates through the procedure of Section 615 be preserved. To this end, the only measure by which a comparison can be made is that between the minimum percentage required for a valid certificate of nomination and the number of votes cast in favor of the incorporation of the city. This is true since the election to decide incorporation is the only one in which electors eligible to vote for municipal officers have cast their ballots. It is my opinion, therefore, that the number of signatures on any certificate of nomination must be not less than five percent of the number of votes cast in favor of incorporation at the successful election that has already been held for that purpose.

It is a maxim of our jurisprudence, adopted into our state law by Section 8760 and reaffirmed in a number of our court decisions that "The law never requires impossibilities." Since the requirement of five per cent of the vote cast for the successful candidate for the same office at the preceding election is, in this situation, an impossibility, it cannot be required of those seeking nomination through the use of certificates of nomination.

The second question which you have referred to this office is as follows:

- (2) "What is the time limit within which nominating petitions must be filed?"

Since, as has already been shown, the municipal election is to be governed by rules regulating county elections, the provisions of Section 618, as amended by Chapter 259 of the 1947 Session Laws, govern the filing of

nominating petitions. The important provisions of this statute are:

"Certificates of nomination herein directed to be filed with the county clerk must be filed not more than sixty (60) days and not less than thirty (30) days before the election. . ."

In view of this definite provision, the time limit within which any nomination petition may be filed with the county clerk, as must be done before this first municipal election, extends over the period included in the time between sixty and thirty days preceding the election.

Sincerely yours,  
R. V. BOTTOMLY  
Attorney General