

nominating election has filed within the time provided by statute.

The fact that the city in which a county office is located has adopted daylight savings time is not controlling. In the absence of legislative enactments the time for filing nominating petitions closes at 12 o'clock midnight Mountain Standard Time.

July 10, 1952.

Mr. John Michael McCarvel
County Attorney
Deer Lodge County
Anaconda, Mont.

Dear Mr. McCarvel:

You have requested that I issue an official opinion as to the time within which the county clerk may accept nominating petitions for the forthcoming election. You have informed me that a candidate for state representative from Deer Lodge County filed his petition at 11:40 p.m. on June 14, 1952.

Section 23-912, R. C. M., 1947, provides in part:

"All petitions for nomination under this act . . . for . . . offices to be voted for in only one county, or district or city, every such petition shall be filed with the county clerk or city clerk as the case may be, not less than thirty days before the date of the primary election."

The election is to be held on July 15, 1952. Excluding that day and counting back 30 days the 1st day on which petitions can be filed is June 14, 1952, (Opinions of the Attorney General, Opinion No. 81, Vol. 24, for a discussion on the method of counting such days).

Narrowed down to the debatable issue, the question is: Should the county clerk accept nominating petitions at any time on the thirtieth day before the primary election?

The case of State ex rel. Bevan vs. Mountjoy, 82 Mont. 594, 268 Pac. 455 is in point. There the court discussed the problem of when the Secretary of State shall accept nominating petitions. The language of the statutes pertaining to the Secretary of State is identical to

Opinion No. 103

Elections—Nominating Petitions—Time of Filing—County Clerk—Daylight Savings Time—Mountain Standard Time.

Held: A candidate who files for a county office at any time prior to midnight of the 30 days before the date of the primary

the statutes pertaining to the county clerks. 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'. He may, if he see fit, transact business in his office at any time during the 24 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."

Also, I wish to point out that Section 90-405, R. C. M., 1947, states that a "day is composed of 24 hours and is the period of time between any midnight and the midnight following." Since the Legislature did not see fit to define the word "day", it is to be presumed that the general statutes defining that word apply, and that it is this definition which the legislature had in mind when enacting section 23-912, (supra).

The practice of accepting nominating petitions up until the hour of midnight has long been followed by the office of Secretary of State and by many of the County Clerks throughout the State. It is a rule of statutory construction that:

"The practical interpretation of ambiguous or uncertain statute by executive department, charged with its administration, for number of years will not be disturbed without very cogent reasons. *Miller Ins. Agency v. Porter*, 20 P. (2d) 643, 93 Mont. 567."

You also state that the candidate in question filed at 11:40 p.m. Mountain Standard Time, which would be 12:40 in Anaconda since that city has adopted daylight savings time. I find no mention in the statutes placing county offices on daylight savings time. Consequently, whether the city in which the county office is located operates on Mountain Standard Time or on daylight savings time, is immaterial to the question herein presented. The Legislature has created no separate rules for those on daylight savings time and in the absence of legislative enactments the time for filing closes at 12

o'clock midnight, Mountain Standard Time.

It is therefore my opinion that a candidate who files for a county office at any time prior to midnight of the 30th day before the date of the primary nominating election, has filed within the time provided by statute.

Very truly yours,
ARNOLD H. OLSEN
Attorney General