

Opinion No. 75

**County Commissioners—Election Laws
—Registration of Voters—Deputy
Registrar—Appointment—Notary
Public—Justices of the Peace—
Constitution, Section 9 of Article
IX—Statutes, Sections 23-565,
23-506, Revised Codes of
Montana, 1947.**

Held: Section 23-505, Revised Codes of Montana, 1947, held mandatory in that the county commissioners must appoint a deputy registrar for each precinct. There are three places for registering to vote: (1) in the office of the county clerk and recorder, (2) for those who reside more than ten (10) miles from the county courthouse, with a Notary Public or with Justices of the Peace, (3) with the deputy registrar appointed by the county commissioners for each precinct within the county.

April 12, 1952.

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

Dear Mr. McCarvel:

You have submitted the following question to my office for an official opinion:

“Is it mandatory for the board of county commissioners to appoint in each precinct of each county, a deputy registrar other than Notary Public and Justices of the Peace?”

Section 9 of Article IX of the Constitution of the State of Montana, provides:

"The legislative assembly shall have power to pass a registration and such other laws as may be necessary to secure the purity of elections and guard against abuses of the elective franchise."

Originally, under our statutes, in order to register for a coming election it was necessary to call at the office of the county clerk and recorder, and there fill out and execute before such officer a registration card. However, this system proved to be inadequate, and in 1915 a new registration law was enacted. See Chapter 122 Session Laws of 1915. This law provided that the board of county commissioners may appoint a deputy registrar for each precinct. In 1917, the wording of this section was changed so that the word "may" was replaced by the word "shall". Amendments since that time have pertained to the amount of compensation the deputy registrar is to receive. The section, now codified as Section 23-505, Revised Codes of Montana, 1947, provides:

"All notary public and justices of the peace are designated as deputy registrars in the county in which they reside, and may register electors residing more than ten (10) miles from the county courthouse in any precinct within the county, and shall receive as compensation for their services the sum of twenty-five (25) cents for each elector registered by them. The county commissioners shall appoint a deputy registrar, other than notary public and justices of the peace, for each precinct in the county. Such deputy registrar shall be a qualified, taxpaying resident elector in the precinct for which he is appointed and shall register electors in that precinct, and shall receive as compensation for his services the sum of twenty-five (25) cents for each elector registered by him. Each deputy registrar shall forward by mail, within two (2) days, all registration cards filled out by him to the county clerk and recorder."

In answering your question as to whether or not this section places a mandatory duty upon the board of

county commissioners to appoint such a deputy, I believe that the change in the wording of the statute, from the permissive word "may", to the mandatory word "shall" is most noteworthy. In the case of *People vs. O'Rourke*, Cal., 13 Pac. (2d) 989, the California court interpreted the word "shall" as follows:

"In common, or ordinary parlance, and in its ordinary signification the term "shall" is a word of command, and one which has always, or which must be given a compulsory meaning; as denoting obligation. It has a peremptory meaning, and it is generally imperative or mandatory. It has the invariable significance of excluding the idea of discretion, and has the significance of operating to impose a duty which may be enforced, particularly if public policy is in favor of this meaning, or when it is addressed to public officials, or when a public interest is involved, or where the public or persons have rights which ought to be exercised or enforced . . . but the context ought to be very strongly persuasive before it is softened into a mere permissive."

The soundness of the public policy expressed in these sections is unquestioned. It is to encourage the largest possible number of registered electors. In a democracy such as ours I know of no other field in which the elected officials should be more careful to adhere to the wholesome object of the law than that which encourages the citizen to register and vote.

That the legislature regarded this statute as a matter of great import is emphasized by Section 23-506, Revised Codes of Montana, 1947, which makes it a felony for any public officer, deputy or any other person whomsoever, to neglect or hinder the purposes of this act in any manner.

In view of the wording of Section 23-505, and the penalty provision of Section 23-506, it is my opinion that the statute does not leave the appointment of deputy registrars to the discretion of the local board of county commissioners; rather, the statute places a mandatory duty upon them to appoint such officials.

It is my further opinion that the legislature has provided three places for registering the vote: (1) in the office

of the clerk and recorder in the county in which the elector may reside, (2) for those who reside more than ten (10) miles from the county courthouse, with the Notary Public or the Justice of the Peace, and, (3) in each precinct within the county, the elector may register with a deputy registrar who must be appointed for that precinct by the county commissioners.

Very truly yours,
ARNOLD H. OLSEN
Attorney General