

Opinion No. 81

**Elections—Registration—County Clerks
—Statutes—Sections 23-513—19-109,
R. C. M., 1947.**

Held: The County Clerks shall close their registration books on May 30, 1952, for the forthcoming primary election as the wording of section 23-513, which requires that the County Clerk shall close all registration for a full period of forty five days prior to and before any election, is mandatory.

Section 19-109, R. C. M., 1947, is not to be construed so as to extend or diminish the provisions of section 23-513. The fact that the forty-fifth full day falls on a holiday does not have any effect on the date when registration closes.

The County Clerks should have a skeleton force at hand on that date for the purpose of accepting registration applicants, but should transact no other business.

April 29, 1952.

Mr. Sam W. Mitchell
Secretary of State
State Capitol
Helena, Montana

Dear Mr. Mitchell:

You have requested my official opinion as to when the County Clerks shall close the registration of voters in the coming election.

Section 23-513, Revised Codes of Montana, 1947, provides in part:

"The County Clerk shall close all registration for the full period of forty-five days prior to and before any election. He shall immediately transmit to the secretary of state a certificate showing the number of voters registered in each precinct in said county . . ."

Excluding the day of election, July 15, 1952, and counting back to the forty-fifth day prior to the date for holding the election, we find that under the terms of the above statute, the time for closing registration is May 30, 1952. This date is Memorial day, a legal holiday. Consequently, your specific question is: "Do the provisions of section 19-109 apply?" That section provides:

"Whenever any act of a secular nature, other than work of necessity or mercy, is appointed by law or contract to be performed upon a particular day, which falls on a holiday such act may be performed upon the next business day with the same effect as if it had been performed upon the day appointed."

It has been held that this section does not create an austere statute prohibiting the performance of any public act on Sunday. Rather, it is a statute allowing an extra day of grace for the performance of certain acts. See *Hays vs. Alderson*, 49 Mont. 387, 142 Pac. 210.

In the case of *Seawell vs. Gofford*, Secretary of State, 22 Idaho 295, 125 Pac. 182, a statute similar to section 19-901 was discussed relative to the time for filing nominating petitions. The wording of the statute pertaining to filing for nomination was in the same form as section 23-513. There, the court held:

"Said section of the statute provides that such paper must be filed at least thirty days prior to the primary election. Now, if such papers must be filed 30 days prior to the day of election, they cannot be le-

gally filed within the thirty days next preceding the election. In other words, they must be filed "without" that period, and not "within" it. That is the reasonable construction of the statute; in fact it is too plain to require construction."

Then, referring to that statute which is analogous to section 19-901, *supra*, the court held:

"The section refers to the time in which an act provided by law is to be done . . . In the case under construction, however, the statute does not fix the day upon, or the time within, which the certificate is to be filed, but declares that it shall be filed at least thirty days prior to the day of the primary election; and to hold that it can be filed 29 or 28 days prior to such date would be a clear disregard of the plain provisions of said statute."

In *State ex rel Bevan vs. Mountjoy*, 82 Mont. 594, 268 Pac. 558, our Court adopted the same line of reasoning, stating:

"The books are filled with cases concerning the rule to be adopted in the computation of time, and many nice distinctions are drawn as to whether the time should be computed as to leave a given number of clear days between the happening of two events, or as to whether the first and the last days shall be excluded, or the first, or the last. As we view the matter, in this case it is unnecessary to indulge in niceties of logical reasoning as to the proper construction to be given the phraseology of a clause or sentence which provides for the computation of time because in the construction of the statute under construction we must be mindful of the rule that legislative enactments are to be so construed that the whole will stand, and, if there is any reasonable doubt as to the meaning of one phrase, that phrase must be given such a reasonable construction as will enable it to be harmonized with other provisions dealing with the same subject."

In view of the above, an interpretation of Section 23-513, whereby registration would be closed on either May 29, or May 31, would not give the time

required by statute. To close the registration lists on May 29 would deprive the elector of his right to register any time before forty-five days prior to the election, while to close the lists on May 31 would prevent the county clerk from closing registration forty-five days prior to the election.

It is therefore my opinion that the provisions of section 19-901 do not apply, and that section 23-513, in view of the language of the act, cannot be extended or limited. Consequently, regardless of whether or not the last day for registering falls on a Sunday or on a Holiday, the county clerks must close the registration lists a full forty-five days prior to the date set for the election. Therefore, registration is to close on May 30, 1952.

It is further my opinion that the county clerks should have a skeleton force at hand on that day for the purpose of accepting registration applications, but that office should not conduct any other official business on that day. Also, the deputy registrars and other officials charged with the duty of securing registrations should continue to execute their duties on that day.

Very truly yours,
ARNOLD H. OLSEN
Attorney General