

statute, which was formerly Section 857, R.C.M., 1907, contained the requirement that electors in school districts of the first-class must be registered. Chapter 76, Laws of 1913, repealed this section and enacted a new section which omitted the requirement that the electors in a first-class district were limited to those who were registered.

Under Section 9 of Article IX of the Montana Constitution, the legislative assembly was given the power to pass registration laws. The constitutional provision was considered in the case of *State ex rel. Lang v. Furnish*, 48 Mont. 28, 134 Pac. 297, where the court said:

“ . . . It is a principle long established that registration is no part of the qualifications of an elector and adds nothing to them; it is merely a method of ascertaining who the qualified electors are, in order that abuses of the elective franchise may be guarded against . . . ”

Section 23-526, R.C.M., 1947, which is a portion of the chapter on registration, provides in part as follows:

“No person shall be entitled to vote at any election mentioned in this act unless his name shall, on the day of election, except at school election in school districts of the second and third class, appear in the copy of the official precinct register furnished by the county clerk to the judges of election, and the fact that his name so appears in the copy of the precinct register shall be prima facie evidence of his right to vote; . . . ”

An examination of the history of this statute reveals that it was first enacted as Section 35, Chapter 113, Laws of 1911, and did not contain the phrase “except at school election in school districts of the second and third class.” Under the 1911 statute, registration was a prerequisite to vote at any school election. The legislature of 1915 amended the registration laws and that portion of Section 23-526, R.C.M., 1947, with which we are concerned, was amended to read as it is now. To clarify the act and

Opinion No. 63

**Schools and School Districts—
Elections in School Districts in the
First Class—Registration Necessary**

HELD: 1. Only registered electors may vote at annual elections in school districts of the first class.

2. It is the duty of the county clerk to prepare poll books for a school trustee election in school districts of the first class.

March 1, 1956

Mr. Edward J. Ober, Jr.
County Attorney
Hill County
Havre, Montana

Dear Mr. Ober:

You have requested my opinion as to whether qualified electors at the annual school district election in a district of the first class must be registered electors. You have also asked if it is necessary for the county clerk and recorder to prepare poll books for such an election.

Section 75-1618, R.C.M., 1947, enumerates the qualifications of electors at school elections and reads as follows:

“Every citizen of the United States of the age of twenty-one years or over who has resided in the state of Montana for one year, and thirty days in the school district next preceding the election, may vote thereat.”

The above quoted statute does not state that electors at school district elections must be registered. This

designate the elections which are covered by the laws on registration, what is now Section 23-530, R.C.M., 1947, was first enacted in 1915. This section reads as follows:

“The word ‘election’, as used in this law, where not otherwise qualified, shall be taken to apply to general, special, primary nominating, and municipal elections, and to elections in school districts of the first class.”

As Section 23-526, R.C.M., 1947, precludes any vote being cast by an unregistered elector, and elections in school districts of the first class are specifically included, there can be no doubt of the necessity of registration. It is the duty of the county clerks to prepare poll books prior to the election as provided in Section 23-515, R.C.M., 1947.

It is therefore my opinion that only registered electors may vote at annual elections in school districts of the first class.

It is also my opinion that it is the duty of the county clerk to prepare poll books for a school trustee election in school districts of the first class.

Very truly yours,
ARNOLD H. OLSEN,
Attorney General.