

March 15, 1956

Mr. John C. Harrison
 County Attorney
 Lewis & Clark County
 Helena, Montana

Dear Mr. Harrison:

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

1. Is Chapter 80, Session Laws of 1955, a valid exercise of legislative authority?

2. Must a County Clerk and Recorder, upon the request of those persons designated as a deputy registrar by Chapter 80, Session Laws of 1955, furnish to such persons the requisite forms for registration or transfer of registration?

The factual situation upon which the above questions have been raised is indicated by the following quotation from your letter:

"Some of the County Clerks and Recorders have taken the position that the legislature may not establish deputy recorders to perform the functions of the office and consequently have refused to give to Notaries Public or Justices of the Peace the requisite forms for registrations or transfer. The County Clerks and Recorders have questioned the validity of such registration."

At the outset it must be pointed out that Section 23-501, R.C.M., 1947, declares that the County Clerk and Recorder is the **Ex-Officio County Registrar** of the county and must perform all acts and duties as prescribed by the Registration Act without additional pay or compensation.

Further, it must be pointed out that Section 23-505, R.C.M., 1947, as amended by Chapter 80, Session Laws of 1955, designates all notaries public and justices of the peace as deputy registrars in the county in which they reside and not deputy clerks and recorders.

With the above clarification, your first question may now be answered by reference to Section 9, Article IX

Opinion No. 66

**Constitution — Registration Laws —
 Statutes — Clerk and Recorder
 Ex-Officio County Registrar —
 Duties — Deputy Registrars —
 Notary Public — Justice of the Peace
 —Penal Penalties**

HELD: 1. A County Clerk and Recorder, as Ex-Officio County Registrar, must, upon the request of a person designated as a deputy registrar by Chapter 80, Session Laws of 1955, furnish to such person the requisite forms for registration or transfer of registration of the electors within the county.

2. Chapter 80, Session Laws of 1955, is a valid exercise of legislative authority.

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

"The legislative assembly shall have the 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."

Pursuant to this grant of power, the Montana State Legislative Assembly has enacted Chapter 80, Session Laws of 1955, and other laws governing the registration of electors of this state. Such enactments, in view of Section 9, Article IX, supra, are a valid and constitutional exercise of legislative authority.

Chapter 80, Session Laws of 1955, is an amendment to Section 23-505, R.C.M., 1947. This amendment merely extends the authority of all notaries public and justices of the peace for registering electors within their respective counties. Such an extension of authority to those officers designated as deputy registrars is an expression of legislative intent to fulfill the dictates of our Constitutional Article IX, Section 9, and to insure a freer exercise of the electors voting franchise.

In 24 Reports and Official Opinions of the Attorney General 75, wherein Section 23-505, R.C.M., 1947 was considered stated:

"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."

In Opinion 75, I held that Section 23-505, R.C.M., 1947, was mandatory in that the county commissioners must appoint a deputy registrar for each precinct.

What was said in 24 Reports and Official Opinions of the Attorney General 75, is most apropos in the instant case and it is clear that

Chapter 80, Session Laws of 1955, is a valid exercise of legislative authority.

Your second question must also be answered in the affirmative for it is the duty of the clerk and recorder and ex-officio County Registrar to carry out the purposes of the Registration Act. Section 23-501, R.C.M., provides in part:

"The county clerk of each county of the state of Montana is hereby declared to be ex officio county registrar of such county, and SHALL PERFORM ALL ACTS AND DUTIES IN THIS ACT PROVIDED . . ."

In the case of *People v. 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."

As noted, supra, one of the prime purposes of the Registration Act was to insure a freer exercise of the electors voting franchise in this state. To accomplish this purpose, our state legislative assembly enacted Section 23-505, R.C.M., 1947. Subsequently, the legislative assembly broadened the scope of this statute by Chapter 80, Session Laws of 1955, whereby the notaries public and the justices of the peace of the county were given additional authority to register the electors residing within their respective counties.

That our legislative assembly regarded Section 23-505, supra, as amended with grave import is indicated by Section 23-506, R.C.M., 1947, which makes it a felony for any public officer to neglect or hinder the purposes of the registration act in any manner.

Section 23-506, R.C.M., 1947, reads in part as follows:

“ . . . or any public officer or officers, employees, deputies, or assistants, or other persons whomsoever, upon whom any duty is imposed by this act, or any of its provisions, who shall neglect such duty . . . or shall perform it in such way as to hinder the objects and purposes of this act, shall be deemed guilty of a felony, shall, upon conviction thereof, be punished by imprisonment in the state prison for a period of not less than one (1) year or more than ten (10) years, and if such person be a public officer, shall also forfeit his office, and never be qualified to hold public office, either elective or appointive, thereafter.”

To hold that a County Clerk and Recorder and Ex-Officio County Registrar may refuse to furnish the designated deputy registrars the requisite forms for the registration and transfer of registration of the electors within the county would defeat the purposes of the Registration Act and render void the dictates of our law making body. Such a conclusion would not be the expression of the law on the subject.

Further, registrars are election officers (18 Am.Jur. Election Sec. 31). Their appointment, qualifications and tenure are generally provided for by statute (18 Am.Jur., Elections, Sec. 89). The Clerk and Recorder is not made registrar by the Constitution and therefore the office is statutory and subject to change in accord with the general rule.

It is therefore my opinion that a County Clerk and Recorder, as Ex-Officio County Registrar, must, upon the request of a person designated as deputy registrar by Chapter 80, Session Laws of 1955, furnish to such person the requisite forms for registration or transfer of registration of the electors within the county.

It is also my opinion that Chapter 80, Session Laws of 1955, is a valid exercise of legislative authority.

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