

Opinion No. 79**Schools and School Districts—Fees to County Clerk for Bond Election**

- Held:**
- 1. The county clerk and recorder may not receive compensation for checking and certifying a petition for a school district bond election.**
 - 2. The county clerk and recorder shall receive five cents per name for the preparation of registration lists and poll books and that such compensation is limited to payment for each name notwithstanding the fact each name appears twice, once in the registration lists and again in the poll books.**
 - 3. All printing and publication costs for a bond election must be paid by the school district.**

November 20, 1958

Mr. John L. McKeon
County Attorney
Deer Lodge County
Anaconda, Montana

Dear Mr. McKeon:

You have requested my opinion concerning the fees to be charged by the county clerk for the conduct of a bond election by a school district of the first class.

Under the provisions of Section 75-3909, RCM, 1947, it is made the duty of the county clerk to examine any petitions for a bond election and attach the certificate of his office setting forth his findings as to the sufficiency of the petition. No provision is made in this statute for a fee to be paid to the county clerk.

Another duty of the county clerk in regard to a school district bond election is the preparation of lists of the registered electors and the preparation of poll books as required in Section 75-3912, RCM, 1947. This statute specifically provides:

"A charge of five cents per name for the use and benefit of the county shall be made by the county clerk for preparing such lists and poll books."

It is to be observed that the charge is for each name and the fact such name appears once in the registration lists and once in the poll books would not increase the amount to be paid by the school district for the service of the county clerk.

Section 75-3912, RCM, 1947, is one part of the chapter on school bonds and the preparation of lists of registered electors and poll books is mandatory not because of the class of the school district but because of the fact it is a bond election.

An examination of the general election laws reveals that under Section 23-514, RCM, 1947, it is the duty of the county clerk to prepare lists of registered electors for elections including that of school districts of the first class and under Section 23-515, RCM, 1947, to prepare poll books for elections including an election held in a school district of the first class. The compensation of the clerk for furnishing poll books is specified in Section 23-519, RCM, 1947, which is in the amount of three cents for each and every name in such poll books and such fee must be charged for an election in a school district of the first class. It must be remembered that poll books are necessary for an election in school districts of the first class but the same are not necessary for elections in second or third class districts. The elections I refer to are the annual elections of trustees and special elections other than those to vote on the question of issuing bonds. The conduct of school district bond elections is controlled by the provisions of Chapter 39 of Title 75, RCM, 1947, which is limited in scope to bond elections and the statutes therein are of a special nature which results in their controlling general laws. As Section 75-3912, RCM, 1947, provides for the payment of five cents per name to the clerk for the preparing of registration lists and poll books such fee is the only charge the county clerk is authorized to make.

In *State ex rel. Hall vs. Niewoehner*, 116 Mont. 437, 155 Pac. (2d) 205, our surpeme court said:

"No fee is prescribed for the filing of a motion and therefore no fee could be accepted by the clerk for he may not collect any fee not prescribed by law."

A similar rule was expressed in *State ex rel. Baker vs. District Court*, 24 Mont. 425, 62 Pac. 688, where it was held:

"Under the familiar rule that no officer may demand a fee for any official service unless clearly authorized to do so, the clerk of the District Court could not lawfully collect the fee charged in the bill."

It is the duty of the clerk of the school district in a school district of the first class to post lists of registered electors (Section 75-3912, RCM, 1947) and the publication of notice of election in school districts of the first class is made the duty of the board of trustees (Section 75-3910, RCM, 1947). Also any printing done for a bond election is done at the expense of the school district.

It is therefore my opinion that the county clerk and recorder may not receive compensation for checking and certifying a petition for a school district bond election.

It is also my opinion that the county clerk and recorder shall receive five cents per name for the preparation of registration lists and poll books and that such compensation is limited to payment for each name not withstanding the fact each name appears twice, once in the registration lists and again in the poll books.

It is also my opinion that all printing and publication costs for a bond election must be paid by the school district.

Very truly yours,
FORREST H. ANDERSON
Attorney General