

**Opinion No. 57**

**ELECTIONS; General Elections; polls, hour to open—Sections 23-608 and 23-1202, Revised Codes of Montana, 1947.**

**Held: The polls must be opened at one o'clock in the afternoon on the day of the general election, in precincts having less than one hundred registered electors.**

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December 31, 1962

Mr. Russell K. Fillner  
Rosebud County Attorney  
Forsyth, Montana

Dear Mr. Fillner:

You have requested my opinion on the following question:

At a general election, what hour must the polls open for a precinct having less than 100 registered electors?

This question is presented by the apparent conflict in Sections 23-608 and 23-1202, RCM, 1947. Section 23-608, RCM, 1947, provides:

"The clerks of the several boards of county commissioners must, at least twenty (20) days before any general election, make and forward by mail to such judge or judges as are designated by the county commissioners, three written notices for each precinct, said notices to be **substantially** as follows:

"Notice is hereby given that on the first Tuesday after the first Monday of November, 19....., at the house....., in the county of....., an election will be held for..... (naming the offices to be filled, including electors of president and vice-president, a representative in congress, state, county and township officers), and for the determination of the following questions (naming them), **the polls of which election will be open at 8:00 A. M. and continuing open until 8:00 P. M. of the same day.**

Dated this.....day of....., A. D. 19..... Signed A. B., clerk of the board of county commissioners." (Emphasis added.)

Section 23-1202, RCM, 1947, provides:

"The polls must be opened at eight o'clock on the morning of election day and must be kept open continuously until eight o'clock P. M. of said day, when the same must be closed; **provided that in precincts having less than one hundred (100) registered electors the polls must be opened at one o'clock in the afternoon of election day and must be kept open continuously until eight o'clock P. M. of said day, when they must be closed;** provided, further, that whenever all registered electors in any precinct have voted the polls shall be immediately closed." (Emphasis added.)

Both of these statutes were enacted in 1871 and were reenacted as Sections 1266 and 1290 of the Political Code of 1895. There was no conflict as to the hours that the polls would open until the enactment of Section 1, Chapter 3, Laws of 1935, which amended Section 23-1202, RCM, 1947, to provide for the opening of the polls at one o'clock in precincts having less than one hundred registered electors. Subsequent to that amendment, both of these statutes have been further amended, but the legislature has never seen fit to amend the notice statute, 23-608, to conform to the polling hour statute, 23-1202, RCM, 1947.

It has long been a general rule of law that notice of elections should correctly state the hours during which the polls will be open, *People v. Seale*, (1878) 52 Cal. 620. It is also a rule of law that even mandatory provisions of election laws are to be liberally construed, *Packwood v. Brownell* (1898), 121 Cal. 478, 53 Pac. 1079.

With these principles in mind, any apparent conflict in these two statutes may be readily resolved by changing the form of the notice of election which is provided by Section 23-608, RCM, 1947. Such

change is possible because the legislature did not make the use of the form that is provided in the statute mandatory, as the statute expressly provides that "said notices to be substantially as follows: . . ." Moreover, this is a general statute dealing with notice of general election while the later statute is a special statute dealing with the hours the polls will remain open.

A special statute governs if it conflicts with the provisions of a general statute. It has been so held by our Supreme Court in the case of *Reagan v. Boyd* (1921) 59 Mont. 453, 460, 197 Pac. 832, where the Court said:

"It is the rule of statutory construction in force in this state and generally elsewhere that, 'where there is one statute dealing with a subject in general and comprehensive terms, and another dealing with a part of the same subject in a more minute and definite way, the two should be read together and harmonized, if possible; but, to the extent of any necessary repugnancy between them, the special will prevail over the general statute.' (Citing case.) 'Where the special statute is later, it will be regarded as an exception to or qualification of the prior general one'."

Therefore, the notice of general election, for precincts with less than one hundred registered electors, should state that the polls for that precinct will open according to the provisions of Section 23-1202, RCM, 1947.

This same problem was considered in Opinion No. 29, Volume 20, Reports and Official Opinions of the Attorney General, and it was there held that Section 23-1202 controlled Section 23-608, RCM, 1947. The construction which is given to a statute by the executive department, unless palpably erroneous, will not be disturbed by the courts. Our Supreme Court, in the case of *Vantura v. Montana Liquor Control Board* (1942) 113 Mont. 265, 270, 124 Pac. 2d 569, had this to say concerning an Attorney General's construction of a statute:

"The rule is that in adopting a statute the legislature is presumed to have acted with knowledge of the previous construction of similar statutes (citing case) and to have adopted such construction (citing case). This rule applies not only to Acts previously construed by the courts, but has equal application to statutes previously construed by the executive or administrative department of the government."

For these reasons, I affirm Attorney General Bottomly's Opinion No. 29 in Volume 20, Reports and Official Opinions of the Attorney General, that in precincts having less than one hundred registered electors the polls must be opened at one o'clock in the afternoon on the day of the general election.

Very truly yours,  
FORREST H. ANDERSON  
Attorney General