

VOLUME 31

Opinion No. 15

**SCHOOLS AND SCHOOL DISTRICTS; Elections; Electors; Qualifications—SCHOOLS AND SCHOOL DISTRICTS; Elections; Registration of electors—SECTION 75-1618, REVISED CODES OF MONTANA, 1947.**

- HELD:**
- 1. To vote for school trustees in school districts of the second and third class, an elector must be a registered voter.**
  - 2. A board of trustees should follow the provisions of Chapter 5 of Title 23 of the Revised Codes of Montana 1947, as amended with respect to registration of electors in school districts of the second and third class.**
  - 3. If an elector is not a registered voter, he may not vote by taking the oath provided in section 75-1619.**

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February 7, 1966

Mr. Willis McKeon  
Phillips County Attorney  
Malta, Montana

Dear Mr. McKeon:

You direct my attention to the fact that section 75-1618, R.C.M. 1947, as amended by section 1 of Chapter 142 of the Laws of Montana of 1965, makes registration a condition to voting in school trustee elections. You further point out that the legislature made no provisions for registration procedure. You inquire:

1. Must an elector be a registered voter to vote for school trustees in school districts of the second and third class.
2. If an elector must be a registered voter, what procedure should a board of trustees follow to provide for such registration.

3. If an elector is not a registered voter, could he vote by taking the oath provided in section 75-1619, R.C.M. 1947.

As this office has pointed out in Opinion 63 of Volume 26 and in Opinion 3 of Volume 31 of the Opinions of the Attorney General, under Section 9 of Article IX of the Montana Constitution the legislative assembly has "the power to pass a registration and such other laws as may be necessary to secure the purity of elections and guard against abuses to the elective franchise." As Opinion 31 of Volume 26 noted the legislative assembly in prior years exercised this prerogative with respect to section 75-1618, R.C.M. 1947. By an 1897 amendment to section 1777 of the Political Code of 1895, now section 75-1618, R.C.M. 1947, the legislative assembly made registration a condition to voting in trustee elections in school districts of the first class. This remained in effect until 1913. During this time the school laws contained detailed provisions with respect to registration procedures which were repealed along with the registration requirement in 1913.

The 39th Legislative Assembly has again exercised this Constitutional prerogative by again making registration a condition to voting in school trustee elections. There is no doubt that the 1965 amendment to section 75-1618, R.C.M. 1947, is intended to cover all school trustee elections.

The question then arises as to registration procedure. As previously noted, from 1897 to 1913 the present section 75-1618, R.C.M. 1947, required registration as a condition to voting in school trustee elections in school districts of the first class and the school laws contained detailed provisions with respect to registration which were also repealed in 1913. In 1911, what is now section 23-526, R.C.M. 1947, was enacted making registration a prerequisite to voting in any school election. In 1915 the legislative assembly amended this section to require registration for school elections in school districts of the first class only. That section now reads:

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; provided, that when the judges shall have a good reason to believe, or when they shall be informed by a qualified elector that the person offering to vote is not the person who was so registered in that name, the vote of such person shall not be received until he shall have proved his identity as the person who was registered in that name by the oath of two reputable freeholders within the precinct in which such elector is registered.

To make the scope of this chapter perfectly clear, what is now section 23-530, R.C.M. 1947, was also enacted in 1915 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.

Thus since 1915 the provisions of Chapter 5 of Title 23 of the Revised Codes of Montana of 1947 as amended have been applicable to school elections in school districts of the first class. However, the 19th Legislative Assembly of 1965 did not amend section 23-526 and 13-530, R.C.M. 1947, to make this chapter applicable to the elections in school districts of the second and third class. It thus becomes necessary to determine the procedure to be followed in these districts with respect to registration including when and how registration is to be closed.

Our Supreme Court was confronted with a similar problem in **Hern v. Olson**, 138 Mont. 576, 358 Pac. 2d 431, where the problem was how to determine the validity of certain acts of election officials at a high school district bond election. To enable the court to determine whether these officials had properly disqualified certain ballots, the court looked to section 23-1704, R.C.M. 1947, of the general election laws for a standard, saying:

We realize that §23-1704 and the case of *Peterson v. Billings*, supra, have reference to the **general** election laws of the State of Montana and do not involve school bond elections. However, even though §75-1605 provides that the conduct of elections in second and third class school districts is "by ballot without reference to the general election laws in regard to nominations, form of ballot, or manner of voting" election officials must be governed by some rules in determining the validity of votes. We hold that the rule stated in §23-1704, with reference to determining the validity of ballots in **general** elections should also apply to school elections . . .

Again in **Woolsey v. Carney**, 141 Mont. 476, 378 Pac. 2d 658, involving a dispute in connection with a school district consolidation election, the Supreme Court of Montana said:

In this case, as in the above-quoted *Hehn v. Olson* case, in an election controversy in a school district the county officials should have been guided by the election laws governing election controversies rather than by the school laws upon which they relied.

Thus in two recent decisions dealing with school elections the Supreme Court of Montana has looked to the general election laws to resolve school election difficulties.

By a parity of reasoning I hold that the provisions of Chapter 5 of Title 23 of the Revised Codes of Montana of 1947 as amended apply to school trustee elections in school districts of the second and third class as well as of the first class.

Your third question is whether an unregistered elector may vote by taking the oath prescribed in section 75-1619. From 1897 until 1913, the period during which the present section 75-1618, R.C.M. 1947, made registration a condition to voting in school trustee elections in school districts of the first class, the present section, 75-1619, R.C.M. 1947, read as follows:

Any person offering to vote may be challenged by any elector of the district, and the judges must thereupon administer to the person challenged an oath in substance as follows: "You do solemnly swear that you are a citizen of the United States; that you are twenty-one years of age; and that you have resided in this State one year, and in this school district thirty days next preceding this election, and that you have not voted this day. So help you God." **If he or she is a resident of a district of the second or third class, and he or she takes this oath, his or her vote must be received; otherwise, rejected. If he or she is a resident of a district of the first class and takes this oath, and has complied with the provisions of this Act, with reference to elections therein or complies herewith, his or her vote must be received; otherwise it shall be rejected. Any person who shall swear falsely before any registry agent or judge of election, shall be guilty of perjury and shall be punished accordingly.** (Emphasis supplied.)

The bold face portion of this section was also repealed in 1913. Thus from 1897 to 1913 these two statutes were complementary insofar as they both required registration with respect to trustee elections in school districts of the first class. It is thus apparent from its history and its plain language that section 75-1619, R.C.M. 1947, is not available to a challenged elector who is not otherwise registered in accordance with Chapter 5 of Title 23 of the Revised Codes of Montana of 1947 as amended.

It is, therefore, my opinion that:

1. To vote for school trustees in school districts of the second and third class, an elector must be a registered voter.
2. A board of trustees should follow the provisions of Chapter 5 of Title 23 of the Revised Codes of Montana 1947, as amended, with respect to registration of electors in school districts of the second and third class.
3. If an elector is not a registered voter, he may not vote by taking the oath provided in section 75-1619, R.C.M. 1947.

Very truly yours,  
FORREST H. ANDERSON  
Attorney General