

VOLUME NO. 34

Opinion No. 20

**HOLIDAYS - State general election day; HOLIDAYS - Retail beer and liquor stores to close on biennial general or primary election day. Sections 4-303, 4-414, 19-107, 23-2601 and 23-2604, R.C.M. 1947.**

- HELD:**
- 1. State primary election days, including the day of the primary election for choosing delegates to the constitutional convention, are not state holidays.**
  - 2. State general election days, including the day of the general election for choosing delegates to the constitutional convention, are state holidays.**
  - 3. The only election days upon which licensed retail beer and liquor establishments must close are the days of the biennial general or primary election.**

October 13, 1971

The Honorable Frank Murray  
Secretary of State  
State Capitol  
Helena, Montana 59601

Dear Mr. Murray:

You have requested my opinion on the following two questions relating to the upcoming elections for the purpose of choosing delegates to the constitutional convention:

1. Is either the primary election day or general election day set for choosing delegates to the constitutional convention considered a legal holiday in the state of Montana?
2. Are licensed retail beer and liquor establishments required to close on either the day of the primary or general election for choosing delegates to the constitutional convention?

As I advised your office upon receipt of your opinion request, because of the short amount of time left preceding the primary election for choosing delegates to the constitutional convention, I answered your questions through a press release and indicated that a formal opinion would follow. Therefore, I will answer the questions concerning the primary election which was conducted on September 14, 1971, as the answers also affect future primary elections to be conducted in the state of Montana.

Your first question concerns whether constitutional convention election days are legal holidays in the state of Montana. Section 19-107, Revised Codes of Montana, 1947, provides in part:

“The following are legal holidays in the state of Montana:

\* \* \*

(12) State general election day.”

Section 23-2601, R.C.M. 1947, provides in part:

“(2) ‘General election’ means an election held for the election of officers throughout the state at times specified by law.

\* \* \*

“(5) ‘Primary’ or ‘primary election’ means a statutory procedure for nominating candidates to public office at the polls.”

Therefore, it can be seen that Montana election laws distinguish between a general election and a primary election. The holiday statute

referred to above specifies that only a general election is a legal holiday in the state of Montana. The primary election held on September 14, 1971, was not a general election within the statutory definition, and thus not a legal holiday. In addition, a regular biennial primary election held in even-numbered years in the state of Montana is not a legal holiday for the same reasons: i.e., it is not a "general election" as defined by Montana law.

Next, we turn to the question of whether November 2, 1971, election day for choosing delegates to the constitutional convention, is a state legal holiday. The election of delegates to the constitutional convention is an election of officers throughout the state at times specified by law, as set forth in Chapter 296 of the Session Laws of 1971. As the election for electing delegates to the constitutional convention fits the definition of general election as defined by statute, November 2, 1971, is a legal holiday as specified by section 19-107, *supra*.

Your second question concerns the closing of licensed retail beer and liquor establishments on the date of the primary and general election for choosing candidates to the constitutional convention. Section 4-303, R.C.M. 1947, provides in part:

"Hereafter all licensed establishments wherein beer, as defined by subsection (b) of section 4-302, is sold, offered for sale or given away at retail shall be closed during the following hours:

\* \* \*

"(c) On any day of a biennial general or primary election at which state and national officers are elected, during the hours when the polls are open, but not upon the day of any other election; provided, however, that when any municipal incorporation has by ordinance further restricted the hours of sale of beer, then the sale of beer is prohibited within the limits of any such city or town during the time such sale is prohibited by this act and in addition thereto during the hours that it is prohibited by such ordinance."

Section 4-414, R.C.M. 1947, provides in part:

"No liquor shall be sold, offered for sale or given away upon the premises licensed to sell liquor at retail during the following hours:

\* \* \*

"(c) On any day of a biennial election or primary election at which state and national officers are elected, during the hours

when the polls are open, but not upon the day of any other election; provided, however, when any city, or incorporated or unincorporated town has any ordinance further restricting the hours of sale of liquor, such restricted hours shall be the hours during which sale of liquor at retail shall not be permitted within the jurisdiction of any such city or town.”

Pursuant to these code provisions licensed retail beer and liquor establishments are required to close on election day only if the election is a biennial general or primary election. Section 23-2604, R.C.M. 1947, provides:

“A general biennial election shall be held throughout the state in every even-numbered year on the first Tuesday after the first Monday of November.”

Neither the September 14, 1971, primary election, nor the November 2, 1971, general election for choosing delegates to the constitutional convention fits within the definition of “general biennial election” as specified by section 23-2604, *supra*. Thus, retail beer and liquor establishments will not be required to be closed upon either the date of the primary or the date of the general election for choosing delegates to the constitutional convention, unless required by municipal ordinance.

THEREFORE, IT IS MY OPINION that:

1. State primary election day, including the day of the primary election for choosing delegates to the constitutional convention, is not a legal holiday as defined by the laws of Montana.
2. State general election day, including the day of the general election for choosing delegates to the constitutional convention, is a legal holiday as defined by the laws of Montana.
3. Licensed retail beer and liquor establishments will not be required to be closed by law upon either the day of the primary or general election for choosing delegates to the constitutional convention, unless required by municipal ordinance.

Very truly yours,

ROBERT L. WOODAHL  
Attorney General