

VOLUME NO. 35

Opinion No. 61

BALLOTS — Required form, justice of the peace; ELECTIONS — Form of ballot, justice of the peace, JUSTICE COURT — Justice of the peace, form of ballot on election. Article VII, sections 8 and 9, Constitution of Montana; sections 23-4510.2 and 93-401 (2), R.C.M. 1947.

- HELD:**
- 1. In an election for justice of the peace, the ballot must be the same, in form, as the ballot used to elect district court judges.**
 - 2. A justice of the peace shall run against himself, if unopposed, as is required for district court judges.**

January 17, 1974

Mr. James A. McCann
 Roosevelt County Attorney
 Office of the County Attorney
 Wolf Point, Montana 59255

Dear Mr. McCann:

You have requested my opinion on the following question:

What is the proper form of the ballot to be used in an election for justice of the peace?

The Judiciary Article of the Constitution of Montana, Article VII, section 8, provides in pertinent part:

(2) ... If there is no election contest for the office, the **name of the incumbent shall nevertheless be placed on the general election ballot to allow voters of the state or district to approve or reject him.** ... (Emphasis supplied)

Section 23-4510.2, Revised Codes of Montana, 1947, implements the above constitutional provision as it applies to the election of district court judges. Section 23-4510.2 provides:

In the event there is no candidate for the office of district court judge in a judicial district of the state other than the incumbent, **the name of the incumbent shall be placed on the official ballot** for the general election as follows:

Shall judge (here the name of the incumbent judge is inserted) of the district court of the _____ judicial district of the state of Montana be retained in office for another term in office?

YES

NO

(Mark an "x" before the word "YES" if you wish the judge to remain in office. Mark an "x" before word "NO" if you do not wish the judge to remain in office.) (Emphasis supplied)

The Constitution of Montana, Article VII, section 9 (1), provides for the qualifications of judicial officers in the state of Montana. It provides:

(1) A citizen of the United States who has resided in the state two years immediately before taking office is eligible to the office of supreme court justice or district court judge if admitted to the practice of law in Montana for at least five years prior to the date of appointment or election. **Qualifications and methods of selection of judges of other courts shall be provided by law.** (Emphasis supplied)

The emphasized portion of the above constitutional provision, in regard to justices of the peace, has been implemented by the legislature in section 93-401 (2), R.C.M. 1947, which provides in part:

(2) A justice of the peace shall be nominated and elected on the **nonpartisan judicial ballot in the same manner as are judges of the district court.** ... (Emphasis supplied)

In the construction of a statute, the intention of the legislature is always to be pursued if possible. *State ex rel. Krona v. Holmes*, 114 Mont. 372, 376, 136 P.2d 220 (1943). It is a general rule of statutory construction that in determining legislative intent, one must first resort to the plain meaning of the words used. *State ex rel. Cashmore v. Anderson*, _____ Mont. _____, 500 P.2d 921, 924 (1972). The plain meaning of the language used in section 93-401 (2), *supra*, dictates that the legislature intended the form of the ballot on which justices of the peace are to be elected shall take the same form as that upon which district court judges are elected. This form is provided in section 23-4510.2, *supra*, quoted above.

THEREFORE, IT IS MY OPINION:

1. In an election for justice of the peace, the ballot must be the same, in form, as the ballot used to elect district court judges.
2. A justice of the peace shall run against himself, if unopposed, as is required for district court judges.

Very truly yours,

ROBERT L. WOODAHL
Attorney General