

VOLUME NO. 35

Opinion No. 75

COUNTY CLERK AND RECORDER — Elections; ballots, preparation of; ELECTIONS — Ballots, candidates' names, rotation of; OFFICES AND OFFICERS — County clerk and recorder, elections, preparation of ballots, Article V, Section 14, Constitution of Montana; sections 23-3016, 23-3305, 23-3308 and 23-3511, R.C.M. 1947.

HELD: 1. All candidates for public office may be rotated on election ballots within legislative districts within the county.
2. A certified list of voters registered in each precinct is not required to implement the rotation of candidates' names on the election ballot.

March 25, 1974

Mr. Harold F. Hanser
Yellowstone County Attorney
County Courthouse
Billings, Montana 59101

Dear Mr. Hanser:

I am in receipt of your letter concerning the ballot rotation of candidates for public office in view of the requirement for single-member legislative districts. Specifically, you have requested my opinion on the following questions:

1. May all candidates be rotated on election ballots within legislative districts in the county?
2. Is a certified list of voters registered in each precinct required in order to implement the rotation of candidates on the election ballot?

Prior to the adoption of the Constitution of Montana, 1972, all federal, state, county and legislative candidates for an elected public office ran at large throughout all precincts in the entire county. Article V, Section 14, Constitution of Montana, now provides for legislative districting as follows:

- (1) The state shall be divided into as many districts as there are members of the house, and each district shall elect one representative.

Each senate district shall be composed of two adjoining house districts, and shall elect one senator. Each district shall consist of compact and contiguous territory. All districts shall be as nearly equal in population as is practicable.

Legislative candidates thus run for elected office only in the precincts within their respective districts while federal, state and county candidates continue to run at large in all precincts in the county. A problem has thus arisen regarding the rotation of candidates' names on the ballot under existing Montana law.

In regard to primary elections, section 23-3308, Revised Codes of Montana, 1947, provides in pertinent part:

(1) At the primary, there shall be a ballot for each political party entitled to participate. Each ballot shall be printed on a separate sheet of white paper of the same size, folded, and securely fastened at the top.

(2) Candidates' names shall be arranged alphabetically by surnames under the offices and under the proper party designation. The names of the candidates for governor and lieutenant governor shall be arranged by the surname of the candidate for governor. When two (2) or more persons are candidates for nomination for the same office, the registrar shall divide the ballot to provide a rotation of the names of the candidates as follows:

(a) Divide all county ballot forms into sets equal in number to greatest number of candidates for nomination or election to any office;

(b) Arrange the sets so that candidates' names are rotated by removing one name from the top of the list for each nomination or office and place the name or number at the bottom of the list for each successive set of ballot forms; however, in printing ballots for use in any one (1) precinct, only one (1) set shall be used and they shall be identical;

The arrangement of names and rotation on the ballot is further set out in section 23-3511, R.C.M. 1947, providing in part:

(6) If two (2) or more persons are candidates for election to the same office, the registrar shall divide the ballot into sets **to provide a substantial rotation** of the names of candidates as follows:

(a) He shall divide the whole number of ballot forms for the county into sets equal in number to the greatest number of candidates for any office;

(b) He shall arrange the sets so that the names of the candidates beginning with a form arranged in alphabetical order, are rotated by removing one (1) name from the top of the list for each office and placing the name or number at the bottom of the list for each successive set of ballot forms;

(c) For the purposes of rotation, the office of president and vice-president shall be considered as a group;

(d) No more than one (1) of the sets shall be used in printing the ballot for use in any one (1) precinct, and all ballots furnished for use in any precinct shall be identical;

The purpose of rotation of candidates upon the ballot is undoubtedly to give each candidate for a particular office as fair and equal an opportunity as possible through the position of names on the ballot. Although the statutes pertaining to rotation do not specifically require it, in practice, election registrars have for many years computed the rotation so as to allow all candidates to appear in the same position on the ballot before as many voters as mathematically equal as possible. Using this mathematical rotation procedure, with federal, state and county candidates running at large while legislative candidates only run in districts, the formula for rotation at the county level is unworkable and almost impossible for registrars and ballot printers to implement. The law does not require useless or impossible acts. Sections 49-123 and 49-124, R.C.M. 1947.

With the adoption of the new constitution and creation of single-member districts, the basic unit for election purposes is now the legislative district. Therefore, the Constitution of Montana has effectively superseded the requirement for rotation at the county level. In order to provide a workable rotation of candidates while preserving the basic purpose of fairness and equality of rotation, election registrars may, pursuant to sections 23-3308 and 23-3511, *supra*, rotate alphabetically all candidates according to the greatest number of candidates for any office by legislative districts within the county.

In your second question you have asked whether a certified list of voters registered in each precinct is required in order to compute the rotation of candidates on the election ballot. The close of nominations of candidates for public office is 40 days before the primary election under section 23-3305, R.C.M. 1947. However, section 23-3016 (a), R.C.M. 1947, provides that voter registration closes only 30 days before any federal election. In 35 **Opinions of the Attorney General**, No. 36, I held that a primary or general election of candidates for the office of United States senator or representative is a federal election. Thus, there is a time lag between the close of nominations of candidates and the close of voter registration for a federal election. Difficult time problems exist in ballot preparation and printing and in absentee voter ballot distribution if the registrar is required to base candidates' rotation on a certified voter list.

Section 23-3016 (b), R.C.M. 1947, provides in pertinent part that the registrar shall:

(b) Immediately after closing registration send the secretary of state a certificate showing the number of voters registered in each precinct in the county; . . .

Sections 23-3308 and 23-3511, *supra*, do not require the registrar to base his candidate rotation upon this certified voter list. Upon the close of nomination of candidates for public office, the registrar has knowledge of the greatest number of candidates for any office. Since a certified voter list is not required for candidates' rotation, the registrar may then compute the rotation based upon an

unofficial or noncertified figure of the number of voters per precinct. The registrar thus is not required to wait until the close of voter registration to compute the candidate rotation.

THEREFORE, IT IS MY OPINION:

1. All candidates for public office may be rotated on election ballots within legislative districts within the county.
2. A certified list of voters registered in each precinct is not required to implement the rotation of candidates' names on the election ballot.

Very truly yours,

ROBERT L. WOODAHL
Attorney General