

VOLUME NO. 36

Opinion No. 111

ELECTIONS — Non-partisan primary elections; ELECTIONS — method of nominating candidates in non-partisan primaries; Sections 11-3215, 11-3216, 16-5115.13, 23-3318, 23-4508, Revised Codes of Montana 1947; 25 Am. Jur.2d Elections, §156.

HELD: 1. A primary election is required in non-partisan elections pursuant to section 16-5115.13(2), R.C.M. 1947, except in cities and towns with less than a population of 3,499 and where less than twice the number of candidates to be elected file for an office.

2. The proper method for placing a candidate's name on the primary ballot is by certificate of nomination pursuant to section 23-3318, R.C.M. 1947. The filing deadline set by section 23-3318, supra, is superseded by the specific deadline set in section 16-5115.13(4), R.C.M. 1947.

3. If no more than twice the number of candidates to be elected file for an office in a non-partisan primary, the primary need not be held.

4. In a non-partisan primary, candidates who receive the greatest number of votes will advance to the general election in a number not to exceed double the number of vacancies to be filled.

December 6, 1976

Dale A. Harris, Director
State Commission on Local Government
Capitol Post Office
Helena, MT 59601

Dear Mr. Harris:

I am in receipt of your recent letter wherein you asked for my opinion on several questions concerning the forthcoming local government elections which will be held on February 8, 1977 and April 5, 1977. Your specific questions are as follows:

1. Is a primary election, as called for in 16-5115.13(2), required in non-partisan elections?
2. If the answer to the first question is yes, what is the method for placing candidates names on the primary ballot?
3. Is a non-partisan primary election required if no more than twice the number of candidates to be elected file for an office?
4. How many candidates in a non-partisan primary advance to the general election?

Your first question concerns whether primary elections are required in non-partisan elections. Section 16-5115.13(1) and (2), R.C.M. 1947 provides as follows:

(1) No primary or general election shall be held in 1976 for the election of county officials. The primary and general election for electing city, town, and county officials shall be rescheduled as provided in this section.

(2) The board of county commissioners, city or town council or commission shall order a special local government primary election to be held February 8, 1977 and local government general election on April 5, 1977 for the purpose of electing local government officials.

It is clear therefore, that a primary election is required in most instances. While there are several exemptions for this primary election requirement, no exemption exists merely because an election is non-partisan. Section 16-5115.13(3), *supra*, provides that no primary election is required in cities and towns with a population of 3,499 or less. An additional exemption exists where less than twice the number of candidates file for an office, which is the subject of your third question and will be addressed in depth at that time.

Having established that in most instances a primary election is required in a non-partisan election, your second question asks the method for placing candidates names on the primary ballot. Section 16-5115.13(3), *supra*, provides that candidates shall be nominated by certificates of nomination.

Section 23-3318, R.C.M. 1947 provides that certificates of nomination must be in writing and contain the name of a candidate for the office to be filled, his residence, occupation and business address. The certificate must be signed by electors residing within the political division in which the officer is to be elected and each signing elector must add his place of residence and business address.

The number of signatures must be five percent or more of the total vote cast for the successful candidate for the same office in the preceding general election.

Provisions requiring a statement of principle would not apply as it is required only by the political party. Also, the filing deadline provided in this section is superseded by 16-5115.13(4) which provides that certificates of nomination shall be filed not later than 5:00 p.m. January 7, 1977.

Broadly speaking, what a primary election is to the general election, the certificate of nomination is to the primary election. The political theory is that the nomination certificate is a mechanism which in some measure weeds out the cranks, the publicity seekers, the frivolous candidates who have no intention of going through with the campaign, and those who will run for office as a lark if there is no difficulty in being placed on the primary ballot. A candidate meeting the onerous requirements demonstrates that he is a bona fide office seeker entitled to a place on the ballot.

Those who sign the petitions, in effect, are recommending to proposing the candidate therein named as a suitable person to hold public office. 25 Am. Jur.2d Elections, §156.

Your third question, which was briefly considered earlier, concerns whether a non-partisan primary is required if no more than twice the number of

candidates to be elected file for an office. While Chapter 51, Title 16, *supra*, does not specifically address this question, there is ample authority in Montana election law that a non-partisan primary is not required if less than twice the number of candidates to be elected file for an office.

Section 11-3215, R.C.M. 1947, which deals with non-partisan commission manager elections provides:

(5) In the event the number of legally qualified candidates for the office of commissioner at such primary election does not exceed twice the number of vacancies in the commission to be filled, no municipal primary election for the nomination of candidates for the office of commissioner shall be held....

In those instances referred to in the aforementioned statute the primary candidates advance to the general election. Similar language is found in section 23-4508, R.C.M. 1947 which provides for the non-partisan election of judges:

(1) Candidates for nomination (judges) equal to twice the number to be elected at the general election who shall receive the highest number of votes cast at the primary, or if the number of candidates is not more than twice the number to be elected than all candidates, are nominees for the office.

It is evident, therefore, that a primary election would not be required in these instances.

Your fourth question concerns how many candidates in a non-partisan primary election advance to the general election. As indicated in section 23-4508, *supra*, twice the number of vacancies to be filled advance to the general election. This is further supported by section 11-3216(4), R.C.M. 1947 which provides:

...candidates for nomination to the office of commissioner who shall have received the greatest vote in such primary election shall be placed on the ballot at the next regular municipal election, **in number not to exceed double the number of vacancies in the commission to be filled.** (Emphasis supplied)

THEREFORE, IT IS MY OPINION:

1. A primary election is required in non-partisan elections pursuant to section 16-5115.13(2), R.C.M. 1947, except in cities and towns with less than a population of 3,499 and where less than twice the number of candidates to be elected file for an office.
2. The proper method for placing a candidate's name on the primary ballot is by certificate of nomination pursuant to section 23-3318, R.C.M. 1947. The filing deadline set by section 23-3318, *supra*, is superseded by the specific deadline set in section 16-5115.13(4), R.C.M. 1947.
3. If no more than twice the number of candidates to be elected file for an office in a non-partisan primary, the primary need not be held.

4. In a non-partisan primary, candidates who receive the greatest number of votes will advance to the general election in a number not to exceed double the number of vacancies to be filled.

Very truly yours,

ROBERT L. WOODAHL
Attorney General