

VOLUME NO. 36

Opinion No. 43

**ELECTIONS—Electors, cancellation of registration;
ELECTIONS—Registration, cancellation of registration. Section 23-3014, R.C.M. 1947.**

HELD: The phrase "within forty-five (45) days prior to the closing of registration" in section 23-3014 (1) (c) means "at any time not less than forty-five (45) days prior to the close of registration".

December 9, 1975

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

Dear Mr. Murray:

You have requested my opinion concerning an interpretation of section 23-3014 (1) (c) which pertains to the cancellation of voter registrations. Section 23-3014 (1) (c) and (2) read as follows:

(1) The registrar shall cancel any registration card:

(c) Within forty-five (45) days prior to the closing of registration three (3) qualified registered electors residing within the precinct may challenge an elector by filling affidavits giving the name of the challenged elector, his registry number, his residence, and stating of the personal knowledge of the affiant the person registered does not reside at the place designated on his registration card:

(2) Within thirty (30) days after registration has been canceled, the registrar shall send written notice to the elector at the address shown on the registration card. If a person proves to the registrar that he is qualified, he may reregister.

The crucial language to your question is "within forty-five (45) days prior to the closing of registration ..." It is my understanding that some county officials have interpreted the phrase to mean, "within a period beginning 45 days prior to the closing of registration". In accordance with this interpretation, a county clerk and recorder could cancel the voter registration of certain electors up to the day before the election. I understand that your interpretation of this phrase is, "not later than 45 days prior to the closing of registration."

In examining the county officials interpretation of section 23-3014 (1) (c), a problem arises in reconciling subsection (1) (c) with subsection (2). The period for canceling voter registrations would be from 45 days before the close of registration, to the close of registration. Under this interpretation, a person's registration could be canceled a few days prior to the closure of registration. The interpretation nullifies the effect of subsection (2) which provides that an elector can reregister within 30 days after his registration has been canceled if he can prove he is qualified.

The Montana Supreme Court has stated in **Doull v. Wohlschlager**, 141 Mont. 354, 363, 377 P.2d 759 (1963) that:

A statute will not be interpreted to defeat its evident object or purpose. ... The objects sought to be achieved by legislation are of prime consideration to interpretation of such legislation. (Citations omitted)

It seems evident that the object sought to be achieved by the legislature in section 23-3014 was to allow voter registrations to be canceled not later than 45 days prior to the close of registration. This would allow a voter whose registration had been wrongfully canceled 30 days in which to prove his qualifications and reregister in time to vote in the election. This is also your interpretation of the statute.

This interpretation has been followed in other jurisdictions where the question has arisen. In the California case of **Royal Grocery Co. v. Oliver**, 207 Pac. 61, 62 (1922), the court stated, after citing authority:

... the rule of those cases is that the word "within," when used in connection with the word "before", should be construed as meaning "not later than" or "at any time not less than". **United States v. Sena**, 15 N.M. 187, 106 Pac. 384; **Hammon v. Connolly**, 63 Tex. 62; **Colonial Trust Co. v. Wallace**, (C.C.) 183 Fed. 897.

In a case somewhat analogous to the present situation, **Application of Dowdall**, 245 N.Y.S. 539, 541, 138 Misc. 269 (1930), the court stated:

... the words "within one week before a general or special election" must mean "at least one week before a general or special election" or "at any time in not less than one week before a general or special election." This construction of the statute is reasonable and makes its operation practicable. To determine otherwise would be to hold in effect the legislature intended to place it within the power of a party official a few days or a few hours before a general election to remove all the election officers and substitute new ones.

Other cases supporting this view are: **Dunham v. Reichlin**, Cal App., 8 P.2d 922; **Harmon v. Hopkins**, 116 Cal. App. 184, 2 P.2d 540; and **Prior v. Pryors, Printers**, 56 Ariz. 572, 110 P.2d 229.

There is some authority in Montana on the question, although not on point. In **Young v. Waldrop**, 111 Mont. 359, 362, 109 P.2d 59 (1941), the court held that "within", when used in the phrase "within five days after" means "not later

than five days after.” The court noted that they were construing “within” as it was used in section 9733, Revised Codes and also stated that, “the intention of the legislature ... is to be pursued if possible.” “Within” as used in section 23-3014 (1) (c) is further distinguishable since, in that statute, it is used in the phrase “within forty-five days **prior**”.

The meaning of “within five days after” as given in **Young, supra**, does apply, however, to section 23-3014 (2), which states “within thirty days after registration”. This would mean that an elector may reregister not later than thirty days after his registration has been canceled, if he proves he is qualified. This gives additional support to the contention that “within forty-five days prior” means “at any time not less than forty-five days before”. Any other interpretation would render the section meaningless.

THEREFORE, IT IS MY OPINION:

The phrase “within forty-five (45) days prior to the closing of registration” in section 23-3014 (1) (c) means “at any time not less than forty-five (45) days prior to the close of registration”.

Very truly yours,

ROBERT L. WOODAHL
Attorney General