

VOLUME NO. 36

Opinion No. 80

ELECTIONS — Ballots, precinct committeemen; ELECTIONS — Candidates, dual candidacy; Article V, Section 9, 1972 Montana Constitution; Sections 23-3308, 23-3401, 23-3509 Revised Codes of Montana 1947

HELD: A candidate for state representative may also be placed on the ballot as a candidate for precinct committeeman.

May 13, 1976

Mr. William J. Krutzfeldt
Deputy County Attorney
County of Custer
1200 Pleasant
Miles City, MT 59301

Dear M. Krutzfeldt:

You have requested my opinion as to whether a candidate for state representative may also be placed on the ballot as a candidate for precinct committeeman.

As you noted, there are no direct prohibitions in the Montana election laws relating to dual candidacy. There are, however, several statutes which are pertinent to your question. Section 23-3401 R.C.M. 1947 reads in part:

(3) The names of candidates for precinct committeeman of each political party shall be printed on the party ticket in the same manner as other candidates and the voter shall vote for them in the same manner as he does for other candidates.

Section 23-3308(2) (f) R.C.M. 1947 reads as follows:

This act does not preclude an elector from having his name printed upon the ballot as an independent candidate, and **no candidate shall have his name printed on more than one (1) ticket.**" (Emphasis supplied)

Section 23-3509 R.C.M. 1947 reads as follows:

(1) **Candidates' names shall be printed in one place on the ballot with the name of the party or political organization**, as found in the certificate of nomination in not more than three (3) words, printed opposite the name.

(2) The names of candidates of chief justice, associate justices, and district court judges shall be followed by: "Nominated without party designations."

(3) If a person is nominated for the same office by more than one (1) party, he shall file a written election with the officer with whom he filed his declaration of nomination in the time required to file the declaration. If he fails or neglects to file an election, his name shall appear under the party with whom his nominating declaration was first filed. (Emphasis supplied)

The purpose of section 23-3308(2) (f), *supra*, is clearly to prohibit a candidate from running on more than one political ticket. This section, therefore, has no relevancy to the question under consideration.

Construed alone, section 23-3509(1), *supra*, seems to be a blanket prohibition against a candidate's name appearing in more than one place on the ballot. When read with the entire section, however, it is clear that this prohibition relates to a candidate being nominated for the same office by more than one party. A statute must be read and considered in its entirety and the legislative intent may not be determined from the working of any particular section or sentence, but only from a consideration of the whole. **State ex. rel. Cashmore v. Anderson**, 160 Mont. 175, 500 P.2d 921 (1973).

While both sections 23-3308, *supra*, and 23-3509, *supra*, prohibit a candidate's name from appearing twice for the same office, there is no direct

prohibition against dual candidacy. It then must be determined if there is a constitutional prohibition against one person holding both positions.

Article V, section 9 of the 1972 Montana Constitution reads as follows:

No member of the legislature shall, during the term for which he shall have been elected, be appointed to any civil office under the state; and no member of congress, or other person holding an office (except notary public or the militia under the United States or this state, shall be a member of the legislature during his continuance in office.

This section prohibits a member of the legislature from holding a "civil office under the state" during his term. **Forty-second Legislative Assembly v. Lennon**, 156 Mont. 416, 481 P.2d 330 (1971). It is evident that under the criteria of **Barney v. Hawkins**, 79 Mont. 506, 257 P. 411 (1927) the position of precinct committeeman is not a civil office. Further, since the position of precinct committeeman is not a civil or public office, the common law principle that two incompatible public offices may not be held by the same person does not apply. Even if the position of precinct committeeman were a public office, it would not be incompatible with a legislative office. **State ex rel. Klick v. Wittman**, 50 Mont. 22, 144 P. 648 (1914).

This position is supported by 12 **Opinions of the Attorney General** 328, where then Attorney General L.A. Foot held that a state senator may be nominated and elected as a presidential elector. The opinion noted there was no prohibition against a legislator holding two elected offices, and that the office of state senator and that of presidential elector were not incompatible.

The fact that there is no prohibition against dual candidacy in Montana could easily present problems in future elections. This is an area where other states have taken legislative action, and it is my hope that the 1977 legislative assembly will recognize the problem and take appropriate action.

THEREFORE, IT IS MY OPINION:

A candidate for state representative may also be placed on the ballot as a candidate for precinct committeeman.

Very truly yours,

ROBERT L. WOODAHL
Attorney General