

VOLUME NO. 37

OPINION NO. 131

CONSERVATION DISTRICTS - Election of conservation district supervisors; non-partisan designation; necessity of separate ballots; residence requirement; filing fees; ELECTIONS - Election of conservation district supervisors; non-partisan designation; necessity of separate ballots; residence requirement; filing fees; REVISED CODES OF MONTANA, 1947 - Section - 76-106.

- HELD: 1. There are no partisan designations in a conservation district supervisor election.
2. A separate ballot is necessary if the nominating election is held in conjunction with the state primary election. A separate ballot would also be necessary in a general election if the registrar determines that within his jurisdiction some of the qualified electors in the general election are ineligible to vote in the supervisor election.
3. A supervisor must reside in the district wherein he is nominated and elected.
4. Filing fees are not required for election to the office of conservation district supervisor.

14 April 1978

Douglas G. Harkin, Esq.
Ravalli County Attorney
Ravalli County Courthouse
Hamilton, Montana 59840

Dear Mr. Harkin:

You have requested my opinion concerning the election of conservation district supervisors. The specific questions presented are:

1. Are there any partisan designation requirements?
2. Is a separate ballot necessary?
3. Must a supervisor reside in the district from which he is elected?
4. Are filing fees required?

Section 76-106, R.C.M. 1947, which governs the election of conservation district supervisors, provides:

(1) Within 30 days after the date of issuance by the secretary of state of a certificate of organization of a conservation district, nominating petitions may be filed with the registrar, as defined in Title 23, R.C.M. 1947, to nominate candidates for supervisors of the district. A

nominating petition may not be accepted by the registrar unless it is subscribed by 10 or more qualified electors within the boundaries of the district, or supervisor areas thereof, wherein the nominee resides. Qualified electors may sign more than one nominating petition to nominate more than one candidate for supervisor. If more than six candidates are nominated, the registrar shall give due notice of a nominating election to be held for the selection of six candidates for supervisor to appear on the next general election ballot. This nominating election may be held in conjunction with the state primary election. In the general election, the names of all persons nominated by petition (if six or fewer) or by election shall be printed, arranged in a rotating order of surnames, as provided under 23-3511, upon ballots, with a square before each name and a direction to insert an "X" mark in the square before any three names to indicate the voter's preference. All qualified electors within the district are eligible to vote in the election. The three candidates who receive the largest number, respectively, of the votes cast in the election are the elected supervisors for the district. The registrar in each county shall prepare suitable nonpartisan ballots and polling lists for the election of supervisors, which ballots and polling lists shall be delivered to the election judges in those precincts which contain eligible voters prior to each general election and each primary election in which more than four candidates are nominated. The election judges, clerks, and other election officials in such precincts shall submit such ballots to qualified electors, conduct the election and tabulate the results of such election in the manner provided for by the general election laws of the state.

(2) Two supervisors shall be elected at the second general election following the organization or reorganization of the district and shall replace the two supervisors appointed by the department. Thereafter, a district shall alternately elect three and two supervisors at succeeding general elections. Nominations for the election of supervisors shall be made as provided under subsection (1) except that a nominating election shall be held if more than four candidates are nominated by petition when two supervisors are to be elected.

The answers to your first three questions are found within section 76-106, R.C.M. 1947. The Montana Supreme Court has repeatedly held that the intention of the legislation must first be determined from the plain meaning of the words used, and if the interpretation of the statute can be so determined, the courts will go no further. Matter of Baier's Estate, ___ Mont. ___, 567 P.2d 943 (1977); Coxgrove v. Industrial Indem. Co., ___ Mont. ___, 552 P.2d 622 (1976); Security Bank and Trust Co., v. Connors, ___ Mont. ___, 550 P.2d 1313 (1976). The eighth sentence of 76-106(1), R.C.M. 1947, answers your first question by stating:

The registrar in each county shall prepare suitable nonpartisan ballots and polling lists for the election of supervisors, which ballots and polling lists shall be delivered to the election judge in those precincts which contain eligible voters prior to each general election and each primary election in which more than four candidates are nominated. (Emphasis added.)

The Legislature clearly intended that this election be nonpartisan. Therefore, there are no partisan designation requirements.

As for your second question, there are two situations wherein a separate ballot would be required for the supervisor election. The first situation is when the nominating election is held in conjunction with the state primary election. Section 23-3308(1) requires a ballot for each political party entitled to participate in the primary election. The supervisor election, being nonpartisan, could not be included on any party ballot and, consequently, would require a separate ballot.

The second situation in which a separate ballot would be necessary is when a qualified elector in the general election could conceivably be ineligible to participate in the conservation district supervisor election. For instance, a conservation district may exclude areas within the city limits. As a result qualified electors for the general election residing within the city would be ineligible to participate in the supervisor election. The registrar would be required to prepare separate ballots for the supervisor election if this possibility exists within his or her jurisdiction.

As for your third question concerning the residency of supervisors, subsection (2) of 76-106 provides in part:

Nominations for the election of supervisors shall be made as provided under subsection (1) except that a nominating election shall be held if more than four candidates are nominated by petition when two supervisors are to be elected. (Emphasis added.)

Subsection (1), in turn states:

A nominating petition may not be accepted by the registrar unless it is subscribed by 10 or more qualified electors within the boundaries of the district, or supervisor areas thereof, wherein the nominee resides. (Emphasis added.)

In order to be elected one must be nominated for the position, and that nomination must come from the district, or supervisor areas thereof, wherein he resides. Therefore, a conservation district supervisor must reside in the district wherein he is seeking election.

Your final question is whether filing fees are mandatory in the election of conservation district supervisors. Section 76-106, R.C.M. 1947, does not call for any filing fees. Nor does section 23-3304, R.C.M. 1947, which requires filing fees for offices receiving compensation in the form of salaries or fees, and for the office of county commissioner. The office of conservation district supervisor does not fall within any of these categories, since a supervisor does not receive any compensation, but is merely reimbursed for expenses. Section 76-107(4), R.C.M. 1947.

THEREFORE, IT IS MY OPINION:

1. There are no partisan designations in a conservation district supervisor election.
2. A separate ballot is necessary if the nominating election is held in conjunction with the state primary election. A separate ballot would also be necessary in a general election if the registrar determines that within his jurisdiction some of the qualified electors in the general election are ineligible to vote in the supervisor election.

3. A supervisor must reside in the district wherein he is nominated and elected.
4. Filing fees are not required for election to the office of conservation district supervisor.

Very truly yours,

MIKE GREELY
Attorney General