

VOLUME NO. 37

OPINION NO. 45

COUNTY WATER AND SEWER DISTRICTS - Elections, general election laws, applicability; ELECTIONS - County Water and Sewer Districts, general election laws, applicability; REVISED CODES OF MONTANA, 1947 - Section 23-3016.

- HELD: 1. The specific provisions governing water and sewer district elections in section 16-4501, et seq., R.C.M. 1947, prevail over the requirements of the general election laws when the two conflict.
2. The requirements of section 23-3016, R.C.M. 1947, for 60 days notice of closure of registration at least 40 days prior to an election do not apply to water and sewer district elections held pursuant to section 16-4501 et seq., R.C.M. 1947
3. The board must require registration of voters, and must close registration prior to the election. Reasonable time limitations can be adopted by the board, giving electors at least twenty days notice prior to closing registration.

19 July 1977

Jack Yardley, Esq.
Park County Attorney
Park County Courthouse
Livingston, Montana 59047

Dear Mr. Yardley:

You have requested my opinion on the following questions:

1. Do the voting requirements specified in section 16-4505, R.C.M. 1947, as amended relating to County Water and Sewer Districts and the reference in section 16-4508 as amended to the general voting laws, require the closing registration for an election to create a County Water or Sewer District.
2. Must the time limitation provided in section 23-3016, R.C.M. 1947, as amended, be followed concerning Notice of Closing Registration, since the district election must be held within sixty (60) days of the date of the final hearing of the petition under section 16-4505 of the County Water and Sewer District Law?
3. In the event that the provisions of section 23-3016 do not apply, is close of registration and Notice of Close of Registration required in preparation for the election?

The organization of county water and sewer districts is governed by section 16-4501, et seq., R.C.M. 1947. A district may be organized by presentation of a petition to the board of county commissioners, section 16-4503, which must then hold a hearing, section 16-4504. Upon completion of the hearing the board must make a final determination of the district boundaries and then give notice of an election to be held to determine whether the district should be incorporated. The election must be held within 60 days from the date of the final hearing before the board, section 16-4505. That section further provides:

And the election thereupon shall be conducted, the vote canvassed and the result declared in the same manner as provided by law in respect to general

elections, so far as they may be applicable, except as in this act otherwise provided.
(Emphasis added).

Section 16-4508 reiterates the applicability of the general election laws:

The provisions of the law relating to the qualifications of electors, the manner of voting, the duties of election officers, the canvassing of returns, and all other particulars in respect to the management of general elections, so far as they may be applicable, shall govern all districts except as in this act otherwise provided;
(Emphasis added.)

These last quoted sections make it clear that the general election laws govern water and sewer district elections unless those laws conflict with specific requirements of the district statutes.

The section of the general election laws at issue here is section 23-3016 which provides, as applicable to this opinion:

The registrar shall:

(a) Close registrations as follows:

(iii) for forty (40) days before any election other than hereinabove provided.

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

Sixty (60) days before the election publish notice in a newspaper of general circulation in the county specifying the day registrations will close and post the notice in each precinct. The published notice shall continue for a period of twenty (20) days.

There are two potentially applicable requirements: closing registration 40 days prior to the election and giving notice of closure 60 days prior to the election.

It is clear that the requirement of 60 days notice of the closure of registration for the election is inapplicable to

water and sewer district elections. The board is required by section 16-4505 to hold the election within 60 days of its hearing on the petition. Thus, in order to comply with section 23-3016 the board would have to close registration on the hearing date, which may be prior to the final decision on the proposee district boundaries and therefore prior to the notice of the election itself. This would result in foreclosing electors from voting before they were notified that an election would be held. Thus, the 60-day notification of the closure of registration required by section 23-3016 conflicts with, and cannot apply to water and sewer district elections.

The other requirement of section 23-3016, that registration be closed 40 days prior to the election, does not, on its face, conflict with the water and sewer district statutes. Under section 16-4505 the board must hold the election within 60 days of its hearing on the petition. Notice of the election must be published for 10 consecutive days in a daily newspaper or in two issues of a weekly paper, and the first publication must be at least two weeks prior to the date of the election (section 16-4505).

closure and closure suggested by section 23-3016 Since section 23-3016 requires that notice of closure of registration be given 60 days prior to the election, and that registration actually be closed 40 days prior to the election, there is a clear intent that persons be given at least 20 days in which to register. Within the context of the requirements of section 16-4505 this cannot practically be done. In order to have the 20 day opportunity to register, closure would once again have to be announced on the same day as the board's hearing. Therefore, neither the notice nor the closure requirements of section 23-3016 are applicable to water and sewer elections. In statutory construction, where a particular and a general provision on the same subject are in conflict, the particular prevails. Section 93-46-16, R.C.M. 1947. The plain, specific requirements of the water and sewer districts statutes prevail over the requirements of the general election laws.

While the time limits for the closure and notice requirements of section 23-3016 do not apply, the requirement for closure and notice thereof does apply. The district law does specifically provide that voters must possess "all the laws" and at least 40% "of all registered voters" must vote to validate the election. Section 16-4505. Therefore, the board must require registration and closing of registration, and may adopt reasonable time periods therefore in light of

the circumstances that arise. The twenty-day period between notice of closure and closure suggested by section 23-3016 should serve as a guide.

THEREFORE, IT IS MY OPINION:

1. The specific provisions governing water and sewer district elections in section 16-4501, et seq., R.C.M. 1947, prevail over the requirements of the general election laws when the two conflict.
2. The requirements of section 23-3016, R.C.M. 1947, for 60 days notice of closure of registration at least 40 days prior to an election do not apply to water and sewer district elections held pursuant to section 16-4501 et seq., R.C.M. 1947
3. The board must require registration of voters, and must close registration prior to the election. Reasonable time limitations can be adopted by the board, giving electors at least twenty days notice prior to closing registration.

Very truly yours,

MIKE GREELY
Attorney General