

VOLUME NO. 38

OPINION NO. 105

ELECTIONS - Drainage district and irrigation district commissioner elections, conduct of;
COUNTY OFFICERS AND EMPLOYEES - Election administrator, duty to conduct drainage and irrigation district elections;
DRAINAGE DISTRICTS - Commissioner elections, duty of election administrator;
IRRIGATION DISTRICTS - Commissioner elections, duty of election administrator;
MONTANA CODE ANNOTATED - Sections 13-1-101, 13-1-301, 85-7-1702, 85-7-1710, 85-8-302, 85-8-306.

HELD: Commissioner elections in drainage and irrigation districts must be conducted by the county's election administrator.

10 September 1980

Harold F. Hanser, Esq.
Yellowstone County Attorney
Yellowstone County Courthouse
Billings, Montana 59101

Dear Mr. Hanser:

You have requested my opinion on the following question:

Must commissioner elections in drainage and irrigation districts be conducted by the election administrator in each county?

As part of its general revision of election laws, 1979 Montana Laws, ch. 571, the 1979 Legislature established the position of election administrator. A county's election administrator is the clerk and recorder unless the county governing body designates another official or appoints another individual to serve as election administrator. With regard to school elections the school district clerk is the election administrator. §§ 13-1-101(5) and 13-1-301(1), MCA.

The scope of the election administrator's responsibility is set out in section 13-1-301(2), MCA.

The election administrator is responsible for the administration of all procedures relating to registration of electors and conduct of elections and shall keep all records relating to elector registration and elections.

Section 13-1-101(5), MCA, states further that the election administrator "[is] responsible for all election administration duties." (Emphasis added.)

It is clear that these duties extend to the elections in question. The Legislature has defined "election" as: "[A] general, special or primary election held pursuant to the requirements of state law, regardless of the time and/or purpose." § 13-1-101(4), MCA. "General election"

includes "elections for officers of political subdivisions when the time of the election is set on the same date for all similar political subdivisions in the state." § 13-1-101(8), MCA. "Political subdivision" includes special districts. § 13-1-101(13), MCA.

While the creation and various aspects of the operation of drainage districts are matters within the jurisdiction of the district court, see §§ 85-8-101, 102, 111, 118, 119, 121 and 314 to 327, MCA, there is no indication that the court must administer commissioner elections. Nominating petitions for the office must be filed with the county election administrator, § 85-8-306, MCA, and the election itself "shall be held annually in accordance with 13-1-104." § 85-8-302, MCA. Such elections are "general...election[s] held pursuant to the requirements of state law," and in my opinion therefore must be conducted by the election administrator pursuant to sections 13-1-101(5) and 13-1-301(2), MCA.

The situation with respect to irrigation district commissioner elections is much the same. Such elections are to be "held annually in accordance with 13-1-104." § 85-7-1702, MCA. Except for matters relating to elector qualifications and the nature of voting rights, irrigation district commissioner elections "shall...conform with the provisions of Title 13." § 85-7-1710(3), MCA. Since these elections are within the definition of "election" in section 13-1-101(4), MCA, they are conducted by the county's election administrator.

THEREFORE, IT IS MY OPINION:

Commissioner elections in drainage and irrigation districts must be conducted by the county's election administrator.

Very truly yours,

MIKE GREELY
Attorney General