

VOLUME NO. 38

OPINION NO. 25

CONSERVATION DISTRICTS - Responsibility for costs of conservation district supervisor elections;
ELECTIONS - Responsibility for costs of conservation district supervisor elections;
MONTANA CODE ANNOTATED - Sections 13-4-106, 13-12-213, 76-15-102, 76-15-103, 76-15-201 to 216, 76-15-301 to 303.

HELD: The county in which voting for a conservation district election occurs is responsible for paying the expenses incurred by the election.

2 July 1979

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Resources & Conservation
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Dear Mr. MacIntyre:

You have requested my opinion on the following question:

May Cascade County shift to the Conservation District the responsibility for paying the costs of the Cascade County Conservation District Supervisor Election held November 7, 1978?

The Legislature has declared its policy to "provide for the conservation of soil and soil resources of this state, for the control and prevention of soil erosion, for the prevention of floodwater and sediment damages, and for furthering the conservation, development, utilization, and disposal of water and thereby to preserve natural resources, control floods, prevent impairment of dams and reservoirs, preserve wildlife, protect the tax base, protect public lands, and protect and promote the health, safety and general welfare of the people of this state." § 76-15-102, MCA. Pursuant to this policy, conservation districts may be petitioned for and created under the provisions of sections 76-15-201 through 216, MCA. A conservation district, once established, is divided into supervisor areas. § 76-15-301, MCA. Supervisors for the respective areas are then nominated by petition or nominating election under section 76-15-302, MCA, and elected in a general nonpartisan election under section 76-15-303, MCA. Prior to 1977 the Department of Natural Resources was specifically charged with the duty to pay all expenses of such elections under section 76-106, R.C.M. 1947. However, in that year the Legislature amended the statute to exclude any reference to election expenses. Your inquiry questions the impact of that amendment.

The costs of the election may be separated into two major categories: (1) the printing and distribution of ballots; and (2) the compensation of judges and clerks. It is my opinion that the counties in which the voting occurs must bear the burden of both types of expenses.

Section 13-12-213, MCA, provides in part:

- 1) All ballots cast for public officers within the state, except school district officers, must be printed and distributed at public expense.
- 2) The county shall pay for the printing of ballots and cards of instruction for elections in each county.

The only question arising from the application of this section to conservation district supervisors is whether the supervisors are "public officers" within the meaning of the statute. Section 76-15-103(11), MCA, states: "Supervisor means one of the members of the governing body of a district elected or appointed in accordance with this chapter." District is in turn defined in section 76-15-103(4), MCA, as "a governmental subdivision of this state and a public body corporate and politic...." This concept is reiterated in section 76-15-215, MCA, which provides that "[T]he district is a governmental subdivision of this state and a public body, corporate and politic, exercising public powers." Clearly a conservation district supervisor, as a member of the governing body of a public organization exercising public powers, is a public official. See Poorman v. Board of Equalization, 99 Mont. 543, 550-51, 45 P.2d 307 (1955). Ballots for elections of such supervisors must therefore be paid for by the county under section 13-12-213(2), MCA, until such time as they are specifically excepted, as school district officers are in section 13-12-213(1), MCA.

The same rationale applies to require the county to bear the expenses of providing election judges and clerks. Section 13-4-106, MCA, states: "The compensation of election judges and clerks shall be fixed by the commission at the prevailing federal minimum wage and paid from county funds...." (Emphasis added.) Under this provision conservation districts would not be responsible for these election expenses either, since again they are not specifically excepted from the operation of the statute.

THEREFORE, IT IS MY OPINION:

The county in which voting for a conservation district supervisor election occurs is responsible for paying the expenses incurred by the election.

Very truly yours,

MIKE GREELY
Attorney General