

## **Opinion No. 19-2151**

January 9, 1919

**BY:** HARRY S. BOWMAN, Assistant Attorney General

**TO:** Mr. John Baron Burg, Attorney at Law, Albuquerque, N.M.

Australian Ballot Law Not Applicable to Elections for Justice of the Peace.

### **OPINION**

Upon assuming the office of Assistant Attorney General, I find on my desk your letter of December 6th, making inquiry concerning the application of the Australian ballot law as to holding of elections of justices of the peace.

Under date of February 4, 1918, Assistant Attorney General M. J. Helmick wrote to Superintendent of Public Instruction, J. H. Wagner, regarding the application of this law to the election of school directors in which he held that section 6 of Chapter 89 of the Laws of 1917, known as the Australian ballot law, does not control in the matter of the preparation of the ballots for elections for school directors. I am enclosing herewith a copy of this opinion.

Section 7 of the act excepts from the provisions of section 6 elections for justices of the peace and other officers as well as for members of boards of education, and therefore the same ruling would apply to the one as to the other.

As stated in Mr. Helmick's opinion, this question presents numerous difficulties. It would appear from a casual reading of the statute that all elections are to be held and governed by the provisions of Chapter 89, but upon a closer investigation a serious question arises. As stated, section 7 of Chapter 89 excepts from the provisions of section 6 elections for justices of the peace and other officers. There is no provision in the act wherein ballots for the elections of the officers excepted in section 7 are provided for, which, if it should be held that a justice of the peace election should be held subject to the provisions of the act then there is no provision as to the printing of the ballot, and it would be impossible to hold an election.

It would appear, therefore, as if the legislature had intended that elections for justices of the peace, constables and others named in section 7 should be governed insofar as the preparation of ballots is concerned by the statutes in effect at the time of the enactment of this law and not by the provisions of the Australian ballot law.

It is therefore my opinion that the Australian ballots as provided for by Chapter 89 of the Laws of 1917 are not to be used in the justices of the peace elections, and that the law in effect prior to the enactment of the chapter will govern insofar as the election of those officers are concerned.

I believe that the foregoing answers all of the inquiries contained in your letter.

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