



MONTANA SECRETARY OF STATE

LINDA McCULLOCH

MEMORANDUM

TO: Lisa Kimmet, Deputy
Elections and Government Services Division

FROM: Jorge Quintana
Chief Legal Counsel

DATE: March 14, 2014

RE: Primary Election Ballot

Question Presented

You have asked whether Montana law requires that a Libertarian Party primary election ballot is required to be printed for the 2014 primary election.

Discussion

We have examined the statutes, searched case law, and looked back at precedents set by the Secretary of State for previous elections dating back as far as election records allow. The code section which governs this issue is Mont. Code Ann. § 13-10-209, which states as follows, with the relevant portion in italics:

13-10-209. Arrangement and preparing of primary ballots.

- (1)(a) Ballots for a primary election must be arranged and prepared in the same manner and number as provided in chapter 12 for general election ballots, except that there must be separate ballots for each political party entitled to participate. The name of the political party must appear at the top of the separate ballot for that party and need not appear with each candidate's name.
- (b) Nonpartisan offices and ballot issues may be prepared on separate ballots or may appear on the same ballot as partisan offices if:
 - (i) each section is clearly identified as separate; and
 - (ii) the nonpartisan offices and ballot issues appear on each party's ballot.
- (2) *Except as provided in subsection (3), an election administrator does not need to prepare a primary ballot for a political party if:*
 - (a) *the party does not have candidates for more than half of the offices to appear on the ballot; and*

- (b) ***no more than one candidate files for nomination by that party for any of the offices to appear on the ballot.***
- (3) Subsection (2) does not apply to elections for precinct committee offices. If more than one candidate files for a precinct committee office from a party that will not have a primary ballot prepared, that party shall select the candidate to fill the office.
- (4) If, pursuant to subsection (2), in a primary election held under 13-1-107(1) a primary ballot for a political party is not prepared, the secretary of state shall certify that a primary election is unnecessary for that party and shall instruct the election administrator to certify the names of the candidates for that party for the general election ballot only.
- (5) The separate ballots for each party must have the same appearance. Each set of party ballots must bear the same number. If prepared as a separate ballot, the nonpartisan ballot may have a different appearance than the party ballots but must be numbered in the same order as the party ballots.
- (6) If a ballot issue is to be voted on at a primary election, it may be placed on the nonpartisan ballot or a separate ballot. A separate ballot may have a different appearance than the other ballots in the election but must be numbered in the same order.
- (7) Each elector must receive a set of ballots that includes the party, nonpartisan, and ballot issue choices.

(Emphasis added.)

As you can see, Mont. Code Ann. § 13-10-209(2) sets down the clear rule that a primary ballot must be prepared unless the two conditions set out in (a) and (b) are both met. In that event, a ballot need *not* be prepared. Since both of these conditions have been met this year, no Libertarian Party ballot need be prepared. The first condition has been met because the Libertarian Party has not fielded candidates for more than 50 percent of the offices to appear on the ballot. We have canvassed the entire state by contacting every election administrator to confirm this.

The second condition has been met as well. There are no contested primaries in the Libertarian Party--no races in which more than one candidate has filed. A small bit of history should also be noted here. There have only been two occasions since 1950 in which a third party has been legally entitled to have a primary ballot: in 1996 and 2000 when a Reform Party primary ballot was printed. It should further be noted that in each of these years there were primary contests in which two or more Reform Party candidates were running against each other in the primary.

Conclusion

Based on the above analysis of Mont. Code Ann. § 13-10-209, we have determined that county election administrators are not required to print a Libertarian Party ballot for the upcoming primary election.