

ELECTION: Section 11550, as enacted by the
62nd General Assembly, Extra Session,
1944, and Section 11551, Revised
Statutes of Missouri 1939, construed.

May 12, 1944

*Elections: Not necessary that receipt for filing fee
paid to party treasurer be filed simultaneously
with declaration of candidacy.*

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Honorable John Woodward
County Clerk
Knox County
Edina, Missouri

Dear Sir:

We are in receipt of your letter of May 3, wherein you request an opinion from this department which request reads as follows:

"I respectfully request your opinion upon the following:

"On April 25, 1944, between the hours of 9 and 12 o'clock P.M., a certain party called me to my office and delivered to me a declaration paper signed by Joe C. Kelley of Knox County, Missouri, in the form set out in the Revised Statutes, and wherein the said Joe C. Kelley declared himself to be a candidate for the office of Judge of the County Court upon the Republican ticket and for the August, 1944, primary. However, there was no receipt showing the payment of the candidate's fee to the Republican Central Committee. After consulting the party about the receipt, he stated that perhaps it had been paid, but he did not know for sure, and he then gave me the \$5.00 filing fee, to be delivered to the Republican Treasurer in case the fee was not already paid.

"Also, on April 25, 1944, between the hours of 10 and 12 o'clock P.M., another party, namely, Frank L. Sheets, called me to my office and requested a declaration blank with which to file for the office of Sheriff on the Republican ticket for the August primary in my county. Mr. Sheets executed the blank in proper form,

but he had no receipt from the Republican Treasurer for the filing fee. I had previously told Mr. Sheets on this same day that he would be required to produce a receipt from his County Treasurer for the filing fee to be filed with his declaration.

"Mrs. Mary Fisher, who was Treasurer of the Republican Central Committee on April 25, 1944, informs me that Mr. Kelley paid his filing fee to her before midnight on April 25, 1944, but she did not deliver this receipt to me until April 27, 1944. However, the receipt was dated April 25, 1944.

"Mr. Frank L. Sheets states that he made an attempt to pay Mrs. Mary Fisher, as Treasurer of the Republican Central Committee, the \$5.00 filing fee on the evening of April 25, 1944, but that he was unable to get any response when he called at her residence. He further states that he did not pay to her such filing fee.

"In view of the facts as heretofore stated, in your opinion would Mr. Kelley be considered a candidate for the office of Judge of the County Court and should his name be placed on the Republican ticket for the primary election or should his name be left off such ticket? And should the name of Frank L. Sheets be placed on the Republican ticket for the office of Sheriff for the August primary or should it be omitted from the ticket?

"Your immediate attention to this matter will be deeply appreciated as the time limit for making the primary election ballots is rather limited."

Section 11550, Revised Statutes of Missouri 1939, at the special session of the legislature called by the Governor in 1944, designated as the 62nd General Assembly, Extra Session, repealed Section 11550 and re-enacted said section, which section reads in part as follows:

"The name of no candidate shall be printed upon any official ballot at any primary election, unless such candidate has on or before the last Tuesday of April preceding such primary filed a written declaration, as provided in this article, * * * * *"

Section 11551, Revised Statutes of Missouri 1939, was not disturbed by the Extra Session of the legislature, a portion of which section we quote as follows:

"Each candidate, except for a township office, previous to filing declaration papers, as in this article prescribed, shall pay to the treasurer of the state or county central committee of the political party upon whose ticket he proposes as a candidate and seeks nomination, a certain sum of money, as follows, to-wit: * * * *. To the treasurer of the county central committee - five dollars, if he be a candidate for state representative or any county office; take a receipt therefor, and file such receipt with and at the time he files his declaration papers. The said sums of money, so paid by the several candidates, shall be evidence of their good faith in filing said declaration papers, * * * *."

It will be observed by comparing Section 11550, passed by the Extra Session, that it is nearly identical with Section 11550, Revised Statutes of Missouri 1939, except that the last day for filing was designated in the new section as the last Tuesday of April. Therefore, the authorities construing Section 11550 and Section 11551, Revised Statutes of Missouri 1939, are applicable to Section 11550 enacted at the extra session of the legislature.

We call attention to the case of State ex rel. Haller v. Arnold, 277 Mo., page 474, l.c. 480, wherein the court said:

"* * * * That question is: Does Section 6015 of the act supra, above quoted, absolutely require as a condition precedent to the placing by the Board of Election Commissioners of the name of a proposed non-partisan candidate on the official ballot, that the receipt of the City Treasurer for the deposit of the sum of sixty dollars shall be filed along with, and contemporaneously with the certificate of nomination of such proposed candidate?

"We have concluded that is does not. The affirmative of the question stated and presented by the facts here at issue would in our opinion and in the light of the language of the above section be too narrow a view to take of the meaning of that section. Such a view would inevitably restrict

and circumscribe the right of a citizen to be a candidate for office within such limits and hedge the privilege about with such conditions as materially to impinge upon the guarantee of the Constitution that 'all elections shall be free and open' (Section 9, Article 2, Constitution 1875.) It will be noted that the statute uses the word 'with' only, without qualifying this word by the word 'contemporaneously' or other similar word connoting, or importing, simultaneity of filing of both the receipt for the deposit and the certificate of nomination. Clearly, the language used imports and requires the filing of this receipt at the same place and with the same officer with whom such certificate of nomination is filed. * * * *

"It is manifest that any eligible candidate for office is entitled to the whole of the last day allowed by law within which to submit himself to the electors for their suffrages. In a case like this, where the proposed candidate is in no wise at fault (the argument that he should have made up his mind earlier obviously having no weight, by reason of the truth of the premise last above) ought he to be deprived of the privilege of running for a public office by the mere adventitious fact of the absence from his office, or from the city, or from the state, of the only officer from whom the required official receipt can under the letter of the law be obtained? The Treasurer might be ill, or a case can be imagined where the death of the Treasurer might occur on the last day for filing prescribed by the letter of the statute, and wherein it would be impossible to appoint his successor in time to have such successor accept the required deposit and issue the required receipt therefor. * * * *
* * * all that should be required is the earliest possible payment and obtention and filing thereafter of such receipt: provided, such filing of the receipt shall be in time to allow of the performance by the Board of Election Commissioners of the very first of the ensuing duties incumbent upon them by law. * * * *"

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The view and ruling set forth in the case supra is fully sustained in the case of State ex rel. Huse v. Haden, 163 S.W. (2d) 946, 349 Mo. 982. We shall not quote from this latter case for the reason that said opinion reiterates the quotation hereto set forth from the Haller case.

Now turning to the opinion request we note that Joe C. Kelley's declaration was filed in your office on April 25th, which day was the last Tuesday in April, 1944. We further note that Mrs. Mary Fisher delivered to you a receipt of date April 25, 1944, showing that Joe C. Kelley had paid to her, as Treasurer of the Republican Central Committee, the statutory filing fee.

In this connection we call attention to the case of State ex rel. Dodd et al. v. Dye, 163 S.W. (2d) 1055, l.c. 1057, wherein the court said;

"The receipts for the filing fees were not filed simultaneously with the declarations. Does this render the declaration void? We think not, and especially so since the agreed statement of facts shows that the fees were paid June 1, and the receipts were later filed with the respondent showing that the filing fees had been paid prior to the filing of the declarations. The receipts, at most, are evidences of payment and the time of payment. These were filed with the respondent before the time to print the ballots, and in view of the earlier payments, as shown by the receipts later filed with the respondent and accepted and marked filed by him, we think it is too technical on the part of the respondent to refuse to act when he had evidence to show that the fees were actually paid before the declarations were filed.

"We think we are sustained in this conclusion by the following cases by our Supreme Court; State ex rel. Haller v. Arnold, 277 Mo. 474, 210 S.W. 374, 375; State ex rel. Neu v. Waechter et al., 332 Mo. 574, 58 S.W. 2d 971, and State ex rel. Preisler v. Woodward et al., 340 Mo. 906, 105 S.W. 2d 912."

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In view of the ruling in the case of State vs. Dye, supra, as well as the statements contained in the Haller and the Huse case, it is our view that the name of Joe C. Kelley should be placed on the ballot.

Now turning to the name of Frank L. Sheets, we assume from the reading of your opinion request that Mr. Sheets filed with you, as County Clerk, the statutory declaration, thereby complying with Section 11550, as said section was enacted by the 62nd General Assembly, Extra Session (1944). However, your opinion request is not clear as to whether or not Mr. Sheets ever placed in the hands of Mrs. Mary Fisher the statutory fee of \$5.00 and procured from her, as Treasurer of the Republican Central Committee, the receipt evidencing the payment of said fee. We are unable to determine from your request whether or not Mr. Sheets has complied with Section 11551, Revised Statutes of Missouri 1939.

We wish to call attention to the following quotation taken from the case of State ex rel. Haller v. Arnold, supra, which reads as follows:

"Provided, such filing of the receipt shall be in time to allow of the performance by the Board of Election Commissioners of the very first of the ensuing duties incumbent upon them by law."

Of course, the above statement should be construed and read in the light of the situation detailed in your opinion request, that is, instead of the words "the Board of Election Commissioners" there should be inserted the words "the County Court of Knox County."

We shall not pass upon this question in your opinion request because of the fact that the opinion request does not inform us, as heretofore stated, of the true situation, thinking possibly that after the cases set forth in this opinion have been read it can be easily determined whether or not Mr. Sheets' name should be placed upon the ballot.

As a further aid, we call attention to the case of State v. Brubaker, 177 S.W. (2d) 623. This case throws light on the question of when an instrument is filed in a court of record.

CONCLUSION

It is the opinion of this department that the name of Joe C. Kelley, a resident of Knox County, Missouri, shall be

Honorable John Woodward

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placed on the Republican ticket to be voted at the August primary election as a candidate for the office of Judge of the County Court of Knox County, Missouri.

Respectfully submitted,

B. RICHARDS CREECH
Assistant Attorney General

BRC:ml

APPROVED:

ROY McKITTRICK
Attorney General