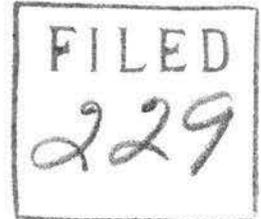


June 24, 1964



Honorable Robert P. C. Wilson, III
Prosecuting Attorney
Platte County
Platte City, Missouri

Dear Mr. Wilson:

In your letter of June 13, 1964, you request an official opinion of this office. You state as follows:

"Hon. Andrew Jackson Higgins, Judge of the Sixth Judicial Circuit, recently resigned. Judge Higgins had filed for nomination for re-election on the Democratic ticket. He was the only candidate on the Democratic ticket and there was no candidate on the Republican ticket. The resignation occurred after the last day on which a candidate may file for office for the primary election."

Your first question is, "How may the vacancy on the Democratic Party ticket be filled?", and second, "May the Republican Party enter a candidate since they did not have a candidate filed for nomination in the Primary?"

We are enclosing a copy of an official opinion of this office written on September 18, 1956, to Honorable John W. Mitchell, Secretary of the Jackson County Board of Election Commissioners, at Independence, Missouri, which opinion we believe answers your questions.

Honorable Robert P. C. Wilson, III

Section 120.550, RSMo 1959, has several slight changes from the one set out in the opinion, and, therefore, we quote the present section of the statute:

"Party committee to make nominations, when.--1. The party committee of the county, district or state, as the case may be, shall have authority to make nominations in the following cases:

"(1) When a vacancy in the candidates for nomination as a party candidate for election to any office shall occur by reason of death or resignation after the last day in which a person may file as a candidate for nomination;

"(2) When any person nominated as the party candidate for any office shall die or resign before election;

"(3) When a vacancy in office which is to be filled for the unexpired term at the following general election shall occur after the last day in which a person may file as a candidate for nomination.

"2. Nominations to fill vacancies caused by death shall be filed, as the case may be, either with the secretary of state not later than fifteen days before the day fixed by law for the election of the person in nomination or with the election authority not later than ten days before such election. Nominations to fill vacancies caused by resignation or withdrawal of a candidate shall be filed with the secretary of state or election authority not later than thirty days before the day fixed for the election.

"3. No name shall be allowed on the ballot until the required fee has been paid."

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You will note that under this statute when a candidate withdraws before the Primary but after the last day for filing as a candidate for nomination, the party committee of the district shall have authority to nominate a candidate. Section 120.800, RSMo 1959, provides that the county committees shall meet and elect a chairman and vice-chairman, one of whom shall be a woman, and that the chairman and vice-chairman of each of the several counties of the Sixth Judicial District would comprise the party committee of that district. Since Judge Higgins was the only candidate and he has withdrawn, the Democratic Judicial Committee of the Sixth Judicial Circuit may nominate a candidate for the office on the Democratic ticket.

The Republican Party cannot make a nomination as no vacancy occurs as a result of "death or resignation" of their candidate.

We call your attention to Section 120.545, RSMo Cum. Supp. 1963, which applies when more than one candidate filed on the same party ticket. This section does not apply here as the candidate that withdrew was the only one filing on that party ticket.

Therefore, pursuant to the provisions of Section 120.550, RSMo, the sole candidate for Circuit Judge having withdrawn after the close of the filing period for the Primary election, the Democratic Judicial Committee may nominate a candidate. Because no elector has filed as a Republican candidate for the office of Circuit Judge, his party committee may not now name a candidate.

Very truly yours,

THOMAS F. EAGLETON
Attorney General

OHS/fh