

ELECTIONS: Candidate is not entitled to have name printed on official ballot unless he complies with Sections 10257 and 10258 at least sixty days before the primary.

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Hon. Herbert M. Adams,
County Clerk,
Lebanon, Missouri.

Dear Sir:

This Department acknowledges receipt of your supplemental letter of July 24th, in reference to the facts of the certain candidate filing for the primary in your County. An opinion was rendered July 12th based on the facts contained in your original letter. The supplemental letter is as follows:

"In my letters to you of June 26th and July 5 I made certain statements which I now find to be erroneous.

It now appears that the candidate in question did present his declaration duly signed, with five dollars cash to the sheriff who had been requested by the deputy clerk to receive same. (Myself and deputy live several miles in the country.) This was done on evening of June 8th.

On the morning of June 9th the deputy clerk asked the candidate to take the money and get a receipt from the committee. This he did. The receipt has the date of June 9th.

Under these changes statements I am asking for a reconsideration of the matter by you."

Declarations of candidates for primaries to be valid must comply with Section 10257 Revised Statutes of Missouri 1929, which is as follows:

"The name of no candidate shall be printed upon any official ballot at any primary election, unless at least sixty days prior to such primary a written declaration shall have been filed by the candidate, as provided in this article, stating his full name, residence, office for which he proposes as a candidate, the party upon which ticket he is to be a candidate, that if nominated and elected to such office he will qualify, and such declaration shall be in substantially the following form:

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"I, the undersigned, a resident and qualified elector of the (_____), precinct of the town of _____, or (the _____ precinct of the _____ ward of the city of _____), county of _____ and state of Missouri, do announce myself a candidate for the office of _____ on the _____ ticket, to be voted for at the primary election to be held on the first Tuesday in August _____, and I further declare that if nominated and elected to such office I will qualify.

(Signed) _____."

It appears from your letter that the candidate in question duly signed the declaration the same as handed to the Sheriff of your County who had previously been instructed by the deputy clerk of your Office to receive the same, this having been done on the 8th day of June the last day for legal filing of declarations. In our opinion, granting that the declaration was in proper form this constituted a legal filing insofar as the declaration is concerned; the sheriff became an agent for you and could properly accept the declaration in your behalf.

We shall next consider Section 10258, Revised Statutes of Missouri 1929, which is as follows:

"DEPOSIT TO BE MADE BY CANDIDATES-- FUND, HOW USED.--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 state central committee--one hundred dollars, if he become a candidate for a state office, or judge of either of the courts of appeals; fifty dollars, if he be a candidate for representative in congress; twenty-five dollars, if he be a candidate for circuit judge or state senator. 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, and shall be used as an expense fund by the several political parties upon whose tickets the various candidates propose as candidates and seek nomination; and such sums of money, so paid, shall be excepted from the terms and provisions of article 14 of this chapter."

The two sections which we have herein quoted follow each other consecutively, one dealing with the condition essential to the filing of the declaration papers of the candidate, the other referring to certain acts to be performed before filing and we think that the statutes are so closely related and interwoven that they must be read in conjunction with each other.

Section 10258 quoted supra, contains the phrase, "previous to filing declaration papers as in this article prescribed" and take a receipt therefor and file such receipt with and at the time he files his declaration papers. Thus clearly showing that in order for a candidate to have his name printed upon any official ballot he must comply with both Sections.

There was a recent mandamus case filed in the Supreme Court, the style of same being State ex rel. Calvin Luallien v. Ray E. Dooley. The facts appear to be exactly reversed in that the candidate obtained his receipt for the payment of the filing fee on June 8th but failed to file his declaration until June 9th. The Supreme Court did not pass upon the merits of the case but denied the writ.

In the case which you present, there are no facts which tend to show that the Sheriff was also the agent or empowered to accept the Five Dollars in question on and in behalf of the treasurer of the county central committee, and as a result the candidate did not receive his receipt for the filing fee until June 9th which is less than sixty days before the primary.

To permit the candidate to obtain the filing fee receipt less than sixty days before the primary and conceding that his declaration was filed or could have been filed within the proper time would in essence hold that Section 10258 is of no force and effect. If the candidate could follow this procedure and could by complying with Section 10257 obtain the printing of his name on the ballot then it would not be necessary if he so chooses to pay Five Dollars filing fee as mentioned in Section 10258 because the sole object of the candidate filing and paying the fee is having the name printed on the official ballot. We think the Legislature so related the two statutes so that

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one has a condition precedent to the other; that both must be complied with "at least sixty days prior to such primary".

CONCLUSION

In the light of the above arguments and statutes we are of the opinion that the candidate in question under the facts as you have so detailed has not properly complied with such statutes therefore is not entitled to have his name printed on the official ballot for the coming primary.

Respectfully submitted,

OLLIVER W. NOLEN
Assistant Attorney-General

APPROVED:

ROY McKITTRICK
Attorney-General

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