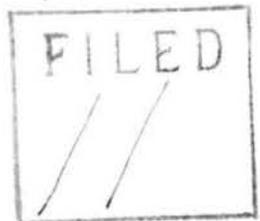


ELECTIONS: Primary. County Clerk should publish election notices under provisions of Section 10262 independently of Sec. 10267A.

June 18th, 1934

6-19

Hon. Dwight H. Brown,
Secretary of State,
Jefferson City, Mo.



Dear Sir:

This Department acknowledges receipt of your letter of June 18th, requesting an opinion on questions as contained in your letter, which is as follows:

"I have sent to the County Clerks and Board of Election Commissioners, as required by Section 10261, Revised Statutes of Missouri, 1929, a list of all persons filing Declarations of Candidacy for office.

Chapter 61 of Article V was amended by the 87th General Assembly (Regular Session) by an Act approved May 8, 1933, see Session Laws, 1933, pages 237-238, which provides that ballots be not printed for minor political parties casting less than five per cent of the votes of the State.

Now the Clerks of the County Courts are writing me to know if they shall include these minor parties in the publication required by Section 10262. I would be glad to have your official opinion on this question at an early date, as this publication must start soon, and oblige."

You state in your letter that you have complied with Section 10261, R.S. 1929, which we are quoting in this opinion in order that we may have all the Statutes before us in determining the conclusion.

"SEC. 10261. SECRETARY OF STATE TO NOTIFY COUNTY CLERKS OF CANDIDATES, ETC.--At least fifty-five days before any primary preceding a general election, the secretary of state shall transmit to each county clerk a certified list containing the name and postoffice address of each person who shall have filed declaration papers in his office, and entitled to be voted for at such primary, together with a designation of the office for which he is a candidate, and the party or principle he represents."

Section 10262 was referred to, which is as follows:

"COUNTY CLERK SHALL PUBLISH NAMES OF CANDIDATES, ETC.--WHEN AND HOW LONG.--Such clerks shall, upon receipt thereof, publish under the proper party designation, the title of each office, the names and addresses of all persons who shall have filed declaration papers, giving the name and address of each, the date of the primary, the hours during which the polls will be opened, and that the primary will be held at the regular polling places in each precinct. It shall be the duty of the county clerk to publish such notice for three consecutive weeks next prior to said primary."

By the two Sections quoted above, it is your duty in the first instance to transmit to the county clerk, certificated lists of the declarations which have been filed in your office fifty-five days before the primary. The next Section makes it the duty of the county clerk to publish the names which you have forwarded him, likewise all the names filing declarations in his county. Publications to be made three weeks next prior to the primary.

Section 10267 contains the procedure for preparing and voting the tickets, which Section is as follows:

"TICKETS, HOW PREPARED -- HOW VOTED.-- At all primaries there shall be as many separate tickets as there are parties entitled to participate in said primary election. There shall also be a nonpartisan ticket, upon which, under appropriate title of each office, shall be printed the names of all persons by whom declaration papers shall have been filed, as required by this article, who do not announce by such declaration papers as candidates for any political party, as defined by this article. The names of all candidates shall be arranged under the appropriate title of the respective offices, and under the proper party designation upon the party ticket, and upon the nonpartisan ticket, as the case may be; and the names of the candidates for each office shall be so alternated on the ballots used in the several election districts or precincts, that each name shall appear thereon substantially an equal number of times at the top, at the bottom, and in each intermediate place, if any, of the lists or group of names in which such candidate's name belongs, and all officers charged with the preparation and distribution of such ballots shall cause

the printer's forms to be so transposed and the ballots so made up as to carry out the intent of this provision. If any elector write upon his ticket the name of any person who is a candidate for the same office upon some other ticket than that upon which his name is so written, this ballot shall not be counted for such person. On any day of nomination of public officers in any primary election precinct, each qualified elector shall be entitled to receive from the judges of the election one ballot of the political party participating in such election for which he desires to vote. It shall be the duty of such judges of election to deliver such ballot to the electors. Before delivering any ballot to the electors, the two judges of election having charge of the ballot shall write their names or initials upon the back of the ballot with indelible pencil, and no other writing shall be on the back of the ballot except the number of the ballot voted."

In 1933, the Legislature enacted another Section, 10267A. In fact it is a new or an addition to Section 10267, modifying or restricting Section 10267, said Section being as follows:

"PREPARATION OF BALLOTS UNDER CERTAIN CONDITIONS.--Whenever any person shall have filed as a candidate for nomination upon a party ticket, which, at the last preceding election for Governor, shall have cast less than 5 per cent of the total vote cast for Governor in such election, and when not more than one person shall have filed as a candidate for any office on such party ticket, no ballot shall be printed for the primary election as herein provided unless upon petition of at least 10 per cent of the voters voting in the county at said preceding election for Governor. When no ballots are printed as hereinbefore provided, the candidates filing declarations and who are unopposed shall be certified, as by this chapter provided, as the nominees of such party casting less than 5 per cent of the vote of the state."

June 18th, 1934

Conclusion

The Legislature, when it passed Section 10267, evidently had in mind that it would be economy not to print any ballots when the minor parties have less than five per cent of the total votes cast for Governor. However, the Legislature does not prohibit the printing of a ballot for the minor parties by giving such parties an opportunity to have ballots printed when ten per cent of the voters petition for the same. The Section makes no reference to any change as provided under Section 10262, quoted supra. We are unable to discern any conflict in the Statutes. The new Section deals solely with the printing of the tickets and ballots, while the Section in question viz; 10262, refers solely to the question of publishing the notice. We think it reasonable to assume that the Legislature still intended that the publication should contain all of the proper party designations, the title of each office, the names and addresses of all persons who filed for such offices and the provisions of Section 10262 should be and can be carried out wholly independent of Section 10267A.

Respectfully submitted,

OLLIVER W. NOLEN,
Assistant Attorney-General

APPROVED:

ROY McKITTRICK
Attorney-General

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