

ELECTIONS: Necessity for Candidates of Minor Political Parties to File in
Primaries.

8-2

July 30, 1934.



Honorable Dwight H. Brown, Secretary of State,
Jefferson City, Missouri.

Dear Sir:

A request for an opinion has been received from you dated July
5, 1934, such request being in the following terms:

"For a number of years the minor political parties, although
neither of them polled the required number of votes to keep
on the ballot, the secretary's of state of this State have
allowed them to make nomination by committees.

The only reason I know for them so doing was the fact that
the Socialist-Labor and Prohibition parties were in existence
before our Primary Law was passed.

Now the legislature has passed an Act allowing the minor
parties, casting less than 5% of the total vote to file can-
didates in the Primary and where they have no opposition, no
ballots will be printed and the parties so filed will be
certified as regular candidates of the party. This has raised
the question as to whether or not these minor parties through
their committees can legally file a candidate for office where
they have not nominated or attempted to nominate a ticket in
the Primary.

Will you kindly advise, as to whether or not such filing can
be made, as soon as possible."

Revised Statutes Missouri 1929, Section 10253, provides in part as
follows:

"Hereafter all candidates for elective offices shall be
nominated by a primary election held in accordance with this
article."

The Article referred to is Article 5 of Chapter 61 of Revised Statutes of
Missouri 1929, which proceeds in the subsequent sections to cover the various
steps necessary for the selection of candidates in the general elections.

In 1933 an amendment to such Article was enacted by the General
Assembly (Laws of 1933, page 238) in which a new section was added to such
Article, as follows:

"Sec. 10267a. Preparation of ballots under certain conditions.--

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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."

From these statutes it is apparent that the law of Missouri requires persons seeking public office to qualify themselves by being selected at primary elections as the candidates of their parties, with the formality of an election by ballot being dispensed with in certain specific cases. To come within this exception the 1933 amendment requires the person claiming the exemption to "have filed as a candidate for nomination" and where a person seeking a place on the ticket in the general elections has not filed as a candidate for nomination in the primary elections such person has not brought himself within the exception to the general laws governing primary elections (R. S. Mo. 1929, Section 10253 et seq.) and consequently Section 10253 above quoted requiring all candidate for office to have been nominated by primary elections could not be complied with by such candidate.

In conclusion, it is our opinion that you are under no duty to place on the ballot the name of any person who has not filed as a candidate for nomination in the primary election for such election.

Yours very truly,
EDWARD H. MILLER

ASSISTANT ATTORNEY GENERAL.

APPROVED:

ATTORNEY GENERAL.