

ELECTIONS: State Socialist Committee may not fill county vacancy.

10-8

October 6, 1934.



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

Dear Mr. Brown:

This is to acknowledge your letter dated September 27, 1934, as follows:

"I have been asked by the Socialist Party Committee, if a State Committee could place a candidate on a county ticket in counties where they have no organization."

In State ex rel. Kimbrell v. Becker, 237 S. W. 117, 1. c. 122, the Supreme Court of Missouri, in Banc, said:

"By virtue of section 4823, R. S. 1919 (Section 10253, R. S. 1929) all nominations for elective office must be made by primary election, except that this provision does not apply to special elections to fill vacancies, nor to county superintendents of schools, nor to city officers not elected at a general state election, nor to town, village, or school district officers. Neither is it applied to the nomination of candidates for presidential elector."

And further,

"While these sections relate to nominations by primary elections, they are the sections

which, prior to 1919, also contained provisions relating to nominations by conventions. They are the only sections which define certificates of nominations in a way which could reasonably be applicable to convention nominations unless section 4811 (Section 10241 R. S. 1929) is applicable by force of its terms. It provides that certificates of nomination of candidates selected otherwise than by a primary shall be signed by electors resident within the district to a number equal to one per cent. of the vote cast in the last preceding election in such district. \* \* \* \* Whether or not these sections are intended to apply to convention nominations, they are the only provisions defining certificates of nomination which have been called to the attention of the court in this case."

Section 10232, R. S. Mo. 1929, reads:

"Any primary election as hereinafter defined, held for the purpose of making nominations to public office, and also electors to the number hereinafter specified, may nominate candidates for public offices to be filled by election within the state. Such nomination shall be made by filing a certificate of nomination, executed with the formalities prescribed for the execution of an instrument affecting real estate."

Section 10233, R. S. Mo. 1929, reads:

"The certificate of nomination, which may consist of one or more writings, shall contain the name of the person nominated, his residence, occupation, and the office for which he is nominated, and also the name and residence of each signer. The certificate may also designate by a name the party or principal which such nominee shall represent."

Section 10253, R. S. Mo. 1929, reads:

"Hereafter all candidates for elective offices shall be nominated by a primary election held in accordance with this article. This article shall not apply to special elections to fill vacancies, nor to county superintendents of schools, to city officers not elected at a general state election, to town, village or school district officers."

From the above, then, it is seen that a person is nominated by primary election to represent the party at the general election. However, two methods are provided in the event there is a vacancy on the party ticket.

Section 10268, R. S. Mo. 1929, provides:

"Vacancies occurring after the holding of any primary or where no person shall offer himself as a candidate before such primary, shall be filled by the party committee of the district, county or state, as the case may be: Provided, however, that no name shall be allowed on any ticket until the required fee shall have been paid."

Article 5, Chapter 61, R. S. Mo. 1929, provides for various committees, that is, county committee, state committee, legislative, senatorial, congressional and judicial committees, such to fill vacancies occurring after a primary in each respective district. The question arises -- May one committee exercise the function of another committee, especially so when no committee exists to exercise that function? It is our opinion that the power to fill vacancies is lodged in the specific committee and if there is no committee then the vacancy may not be filled by another committee. Such are the facts presented by your inquiry, that is, the Socialist Party Committee, same being a state committee, desires to substitute its judgment on a matter wherein a county committee has the power.

If a situation arises such as you have outlined, then, in our opinion, Section 10241, R. S. Mo. 1929, governs; said section being as follows:

"The certificate of nomination of a candidate selected otherwise than by a primary shall be signed by electors resident within the district or political division for which the candidate is presented, to a number equal to two per cent. of the entire vote cast at the last preceding election in the state, the county or other division or district for which the nomination is made; provided that said signers shall declare in said certificate that they are bona fide supporters of the candidate sought to be nominated and have not aided and will not aid in the nomination of any other candidate for the same office."

From the above we have shown that persons should be nominated at a primary and if such persons are not nominated at a primary and a vacancy exists, then by virtue of Section 10268, supra, such vacancy is filled by the party committee of the district, county or state, as the case may be. And absent a proper committee to fill such vacancy, then such vacancy may be filled by virtue of Section 10241, supra, that is, by petition signed by electors resident within the district or political subdivision for which the candidate is presented, to a number equal to two per cent. of the entire vote cast at the last preceding election in the state, the county or other division or district for which the nomination is made.

State ex inf. Barrett, Attorney-General, v. McClure,  
253 S. W. 743;  
State ex rel. Preiss v. Seibel, 246 S. W. 288.

#### CONCLUSION.

It is our opinion that the State Committee of the Socialist Party cannot place a candidate on a county ticket in counties where such has no organization and the only manner that same may fill

Hon. Dwight H. Brown

-5-

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any vacancy would be by petition as outlined in Section 10241,  
supra.

Yours very truly,

James L. HornBostel  
Assistant Attorney-General.

APPROVED:

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ROY McKITTRICK  
Attorney-General.

JLH:EG