

ELECTIONS: Candidate for ward registrar who withdrew verbally the day before election, whose name was not taken off the ballot but subsequently received the most votes, is the legal nominee and if he does not desire to accept the nomination the Co. ~~Board~~^{Commissioner} can fill the vacancy as provided in Sec. 10268, R.S. 1929.

When 2 candidates for constable receive same number of votes, nominee should be determined by lot by canvassers.
August 12, 1936.

Honorable H.D. Allison,
County Clerk,
Buchanan County,
St. Joseph, Missouri.



Dear Sir:

This department is in receipt of your letter of August 8 regarding the election of a party for the office of registrar who withdrew verbally from the race the day preceding the election and inquiring in regard to the Constable's race in Bloomington Township. Your first question is as follows:

"Two parties here filed for registrar of the second ward. On Monday, the 3rd, the day before election, one of the parties came into our office and withdrew. We informed him that it was too late for his name to be taken off the ballot due to the fact that they were already printed and ready to be delivered.

"We did not have him sign a written withdrawal due to the fact that we have been unable to find any law that necessitates a written withdrawal, neither has our prosecuting attorney been able to find a law covering this. On all other withdrawals, however, we have written statements to that effect. Due to the fact that it was late in the afternoon on the day before the election and there were so many details to be settled, we neglected to have him sign a written withdrawal that we had been using as a measure of precaution. The man who withdrew did so verbally and he does not deny the fact that he came into our office and withdrew. He is not attempting to place our office in an embarrassing position by saying that he did not withdraw but instead has repeated that if it

went so far as to go into court, he would testify that he had told us that he withdrew.

"On the day of election the man that withdrew received more votes than his opponent and now he claims that he was legally elected. Our office, taking him at his word on the night of election, did not call his name or tally his votes. The other party claims that after reading in the newspaper on election morning, our notice of his withdrawal, that she ceased campaigning because of having no opposition and she feels that she should be the nominee.

"We would like to know which one is legally nominated. I neglected to say that we notified the newspaper of his withdrawal and it was published in the paper on Tuesday, the morning of the election. Will you please give us a decision on this matter at your very earliest convenience as you can realize the importance of settling this question as soon as possible?"

In withdrawing, the candidate for the office of registrar should have complied with the terms of Section 10251, R.S. Mo. 1929, which is as follows:

"But the secretary of state shall not certify the name of a candidate whose certificate of nomination shall have been filed in his office, who shall have notified him in writing, signed and executed with the formalities prescribed for the execution of an instrument affecting real estate to entitle it to record, that he will not accept the nomination contained in the certificate of nomination. The clerk of the county court shall not include in the publication to be made according to section 10249 the name of any candidate whose certificate of nomination shall have been filed in his office who shall have notified him in like manner that he will not accept the nomination. The names of such candidates shall not

be included in the names of the candidates to be printed in the ballots as hereinafter provided."

For the reason that the statute directs that the candidate shall notify the County Clerk, in writing, signed and executed with the formalities prescribed for the execution of an instrument affecting real estate to entitle it to record, we are of the opinion that the candidate did not legally withdraw his name. If he now desires to be the nominee, we think he is entitled to be the same under the provisions of Section 10275, R.S. Mo. 1929, which is as follows:

"The person receiving the greatest number of votes at a primary as the candidate of a party for an office shall be the candidate of that party for such office, and his name as such candidate shall be placed on the official ballot at the following election."

In the event he does not desire or will not accept the nomination, the County Committee can fill the vacancy as provided in Section 10268, R.S. Mo. 1929, which is as follows:

"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."

II

Your second question is:

"We also have another case that I would like some information on. We have in the Constable's race in Bloomington Township a tie; each candidate received 169 votes. One of the candidates is the incumbent. Will you tell us how to proceed in this case?"

In the case of the two candidates for the office of Constable who each received 169 votes, you are referred to Section 10274, R.S. Mo. 1929, in which the duties of the officers and the canvassers are set forth. Said section provides:

"The county canvass of the returns of a primary shall be made by the same officers, and in the manner as now provided by law, for the canvass of returns of a November election. The canvassers shall meet and canvass such returns at ten o'clock on the Friday following the primary. Their returns shall contain the whole number of votes cast for each candidate of each political party, and a duplicate as to each political party shall be delivered to the county chairman of such party. The canvassers shall also make an

additional duplicate return in the same form, showing the votes cast for each candidate not voted for wholly within the limits of the county. The county clerk shall forthwith send to the secretary of state, by registered mail, one complete copy of all returns as to such candidates, and he shall likewise send to the chairman of the state central committee of each party a duplicate copy of the returns last described relating to such candidates of each party."

Section 10285, R.S. No. 1929 provides:

"In case of a tie vote, the tie shall forthwith be determined by lot by the canvassers."

CONCLUSION

It is the opinion of this department that Section 10285, supra, refers to the procedure in Section 10274, supra, and that the nominee for Constable of Bloomington Township should be determined by lot by the canvassers.

Respectfully submitted,

OLLIVER W. NOLEN,
Assistant Attorney General.

APPROVED:

JOHN W. HOFFMAN, Jr.,
(Acting) Attorney General.