

ELECTIONS: Certificate for county offices may be filed with county clerk not later than 10 days before election for November Election, 1936.

October 26, 1936.

10-27



Honorable G. C. Beckham
Prosecuting Attorney
Crawford County
Steelville, Missouri

Dear Mr. Beckham:

This is to acknowledge receipt of your letter of October 23d, in which you request the opinion of this Department on the question submitted. Your letter is as follows:

"In the August Primary there was no person who offered themselves as a candidate for the nomination for the office of Assessor on the ticket of one of the major parties, which left that nomination vacant. The Central Committee has nominated a candidate for that office, and have offered to file the Certificate of Nomination with the County Clerk. The offer to file said Certificate was made on the 20th day of October, which would be fourteen days before the General election.

"Will you please give me your opinion as to whether or not the Clerk is authorized to accept this Certificate of Nomination for filing and place the name of said candidate upon the official ballots to be voted for at the election November 3?"

If we understand your letter correctly, you desire to know whether or not a certificate of nomination for a county

office (in this case, assessor) where a vacancy exists, is required to be filed with the county clerk or board of election commissioners, as the case may be, "not later than fifteen days before the election" or "not later than ten days before the election," as provided in Section 10245, R. S. Mo. 1929.

We quote from the pertinent parts of Section 10245, supra, as follows:

"Certificates of nominations filed with the secretary of state shall be filed not more than sixty and not less than thirty days before the day fixed by law for the election of the person in nomination. Certificates of nomination herein directed to be filed with the clerk of the county court of each county shall be filed not more than sixty days and not less than fifteen days before election:

It will be noted that in the first proviso it says,

"that in case of any vacancy in said nomination, by resignation, death or otherwise, the central committee, or a convention called for that purpose, of the party on whose ticket such vacancy may occur, may select and certify to the secretary of state, county clerk or board of election commissioners the name or names of candidates to fill such vacancy:"

And in the next following provision, it is provided,

"that the certificates of nomination to fill vacancy shall be filed with the secretary of state not later than fifteen days before the day fixed by law for the election of the persons in nomination, and with the board of election commissioners or county clerk not later than ten days before such election."

Oct. 26, 1936.

In the case submitted by you we understand that at the August Primary no one was nominated by one of the majority parties and that the Central Committee of that party duly certified the name of a candidate for assessor to the county clerk of that county on the 20th day of October, 1936, namely, fourteen days before the General Election.

We think that under the first proviso of Section 10245, supra, the words "or otherwise" govern such a situation as you stated in your letter, and that a certificate duly filed not later than ten days before such election would be in time. We are not unmindful of what is said in the forepart of Section 10245, down to the first proviso, but we think that under the first and second provisos of this section that certificates of nomination to fill vacancies may be filed with the Secretary of State not later than fifteen days before the date fixed for the election, for offices which must be filed in the Secretary of State's Office, but for county offices which must be filed with the board of election commissioners or the county clerk, as the case may be, they are permitted to be filed not later than ten days before such election.

Very truly yours,

COVELL R. HEWITT
Assistant Attorney-General

APPROVED:

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

RH:EG