

ELECTIONS: Right of County Central Committees to name candidates;
must be known to be of same political faith.

September 30, 1936.

10-2

Hon. Wayne Maness,
County Clerk,
McDonald County,
Pineville, Missouri.



Dear Sir:

We acknowledge receipt of your letter of September 15, 1936, which is as follows:

"J. T. Pinnell of Pineville, Missouri, has served as Prosecuting Attorney in McDonald County for a number of terms, was elected as a democrat in 1934, and now serving, during the last primary he filed as a candidate in the Democratic Primary, and was defeated nearly two to one by W. G. Tracy. As the Republican Party did not have a candidate in the Primary for the office of Prosecuting Attorney, the Republican Central Committee on Thursday August 27th, 1936, nominated J. T. Pinnell as their candidate.

"Can this be done under the statutes governing elections, and will it be necessary for me to have his name printed on the ticket as a Republican Candidate for Prosecuting Attorney, in the general election.

"He made a number of good democratic speeches in the primary campaign, but is now bitter against the New Deal.

"Kindly furnish me with an opinion as soon as possible."

It appears that your question is, does the statute authorize the Republican Central Committee of McDonald County to fill a vacancy on the ticket for the office of Prosecuting Attorney when the Republican party had no candidate and nominated no person for such office in the Primary, and does it have authority to name as such Republican candidate the person who is the present Prosecuting Attorney and is holding such office as a Democrat, elected thereto on the Democratic ticket, and who was a candidate on the Democratic ticket at the recent Primary this year and was defeated as such?

The Republican Central Committee has only such authority as is conferred upon it by the statutes of this state, and such statutes conferring power upon the Central Committee should be strictly construed, as all power rests in the people except such as is expressly or by necessary implication taken away from them by the Legislature in exercising its right to speak for the people.

The Legislature has spoken on this question and in Section 10245, R. S. Mo. 1929, is this provision pertaining to the right of a county central committee to place candidates on the ticket at the general election:

"Provided, 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 * * * county clerk * * * the name or names of candidates to fill such vacancy."

This statute confers upon said Central Committee the authority to fill such a vacancy as the one in question, but Section 10246, R. S. Mo. 1929, defines the method by which this Central Committee must perform that duty, and one of the express provisions of this statute so defining and limiting the right or authority of such Central Committee to fill such vacancy is the provision

"that no central committee shall have the power to substitute, to fill any vacancy, the name of any person who is not known to be of the same political belief and party as the person for whom he is substituted."

A cardinal rule of construction of statutes is to determine the intent of the Legislature when it enacted the same, and it seems to us that the reasonable view, and in fact the only view that the

Legislature could have entertained in expressing itself by this statute was to prevent just such occurrences as you state the Republican Central Committee of McDonald County contemplates.

Stating it another way, Section 10246 means that the Central Committee in filling a vacancy must name a person who is known to be a Republican if it is the Republican Central Committee filling such vacancy on the Republican ticket.

It is difficult for us to perceive a plainer state of facts than the one you mention as showing that the party whom the Republican Central Committee here seeks to place on its ticket is not of the same political faith, but, on the contrary, is of the opposite political faith. He not only has stamped on him the opposite political faith by the fact of his having heretofore declared that he was a democrat when he was elected on the Democratic ticket, and by the further fact that he is now and has been for almost two years holding office as a Democrat, but the further fact also proclaims from the housetops that he is a Democrat, such further fact being that he filed as a Democrat in the recent Primary and presumably paid the filing fee therefor, which goes to the Democratic party, and the further fact that he evidently solicited votes as a Democrat in the recent Primary.

It would not be a fair view of the law to say that with such a background as you set forth showing that the given individual has been a Democrat, running on the Democratic ticket, and holding office as a Democrat and drawing his salary as a Democrat, could now over night, and, so far as your question shows, without any declaration on his part to the contrary, be turned into a Republican by the mere placing of his name on the Republican ticket by the Republican Central Committee of your County as the Republican nominee.

This opinion is not written with a view of passing on the question of whether a vacancy exists where no one filed as a candidate before the Primary, and thereafter at the Primary election voters wrote in the name of someone as the candidate for an office. We do not here pass on that question, but it may be determined by a mandamus action in court.

CONCLUSION

It is our opinion that the Republican Central Committee of McDonald County has the authority to fill a vacancy on its ticket for the office of Prosecuting Attorney, but that in so doing it must name a person who is known to be of the Republican political belief and party, and that it has no authority to name as such candidate the person who is now the Democratic Prosecuting Attorney of the county and so functioning, and who ran on the Democratic ticket in the recent Primary.

The naming of this man by the Republican Central Committee being illegal, and it being your duty to observe the law, it is our further opinion that it will not be necessary for you to have his name printed on the ticket for use at the general election.

Yours very truly,

DRAKE WATSON,
Assistant Attorney General.

APPROVED:

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

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