

ELECTIONS: Party cannot become an independent candidate for Sheriff without complying with Section 10241, R.S. 1929.

8-14
August 13, 1936.



Honorable Henry C. Salveter,
Prosecuting Attorney,
Pettis County,
Sedalia, Mo.

Dear Sir:

This department is in receipt of your letter of August 11 wherein you make the following inquiry:

"Will you please advise me if after the Primary Election held on August 4, 1936, a man can still run as an independent candidate for Sheriff in Pettis County, and if he can, what steps are necessary for him to take, in order for him to have his name printed on the official ballot for the November election?"

"Would it make any difference if the man who now desires to run as an independent candidate was a candidate to secure the nomination for this office on one of the Primary tickets at the recent Primary election?"

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"There were no independent candidates for any county office in Pettis County at the last primary election, held August 4, 1936.

"This candidate contends that he has the right to run as an independent candidate for Sheriff and he has filed a declaration with the County Clerk of this county and paid to the County Clerk a filing fee of \$5.00, and has received a receipt from the County Clerk for the same."

Any person desiring to be a candidate on an independent ticket, or the nominee of an Independent Party in the primary, is required to comply with the provisions of Section 10259, R.S. Mo. 1929, which is in part as follows:

"Any person desiring to file declaration papers, or propose as a candidate on any independent or nonpartisan ticket, who does not announce by declaration papers as a candidate for any political party as defined by this article, and is not a member of a political party having a state and county committee, or treasurer thereof, shall pay the sum of money required by this article to be paid by the candidate for the office for which he proposes to the state or county treasurer, as the case may be;"

In 1933, the Legislature passed Section 10267a (Laws of Mo. 1933, p. 238) which provides:

"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."

Neither of the above sections have any direct bearing on the question except that it was the intention of the Legislature that persons desiring to become party nominees in the general election, in order to have their names printed on the ballot, must comply with the terms of the statute. We note that your letter states the candidate in question was a contestant in the recent primary election and was defeated on one of the party tickets--we assume either Republican or Democratic; hence, it is plain that he did not attempt in the primary to qualify as an Independent candidate.

The only other section that bears on the question, and which we believe governs the situation is Section 10241, R.S. Mo. 1929, which is 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."

The candidate in question could not qualify by merely filing his declaration of candidacy or by paying to the County Clerk the filing fee of \$5.00.

In construing this section, the Supreme Court of Missouri, in the case of State exrel. Preiss v. Seibel, 295 Mo. 1.c. 624, said:

"Section 4811 provides for the nomination of candidates for public offices otherwise than by a primary election. If electors resident within a district or political division of the State, to a number equal to one per cent of the entire vote cast at the

last preceding election in the State, county or other political division, desire to nominate one or more candidates for public offices, to be filled by election, the right to nominate them and have their names printed on the ballots is guaranteed in the manner prescribed by this section of the statutes. The candidates so nominated may be those already nominated by one or more of the political parties, so that under this section electors may nominate candidates of the various political parties and have their names printed on the ballots. This authorizes electors to act independently of all political parties. In other words, a ticket so nominated would be a non-partisan or non-political ticket. The only restriction upon such nomination is that the electors signing a certificate of nomination must declare in the 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."

Under Section 10299, R.S. Mo. 1929, it is the duty of the County Clerk to furnish the ballots. Said section is as follows:

"Except as in this article otherwise provided, it shall be the duty of the clerk of the county court of each county to provide printed ballots for every election for public officers in which the electors or any of the electors within his county participate, and to cause to be printed in the appropriate ballot the name of every candidate whose name has been certified to or filed with him in the manner provided for in this article. Ballots other than those printed by the respective clerks of the county courts according to the provisions of this article shall not be cast or counted in any election."

Thus, it will be noted that only candidates whose names have been certified and filed with the County Clerk in the manner provided for in Article VI, R.S. 1929 are to be printed on the ballots.

The party in question is privileged to run independently as any other citizen in the State of Missouri, if he is qualified, by the name of the regular party nominee being scratched and his name written in instead, and if he should receive more votes than either of the party nominees, he would be legally elected to the office of Sheriff. This has been the law in this state since the case of State ex rel. Hostetter, 137 Mo. l.c. 645, wherein the Court said:

"But even if we should concede that the vacancy caused by the death of Mr. Wheeler happened too late to permit of placing a formal printed nomination on the ballot, under the present ballot law, the people would nevertheless have the right to express their choice by writing on the ballot the name of any qualified person whom they desired to designate for any office which the law (section 1964) permitted to be then filled by election. The electors are not restricted to the names or offices printed on the official ballot. (People ex rel. v. Shaw, 133 N.Y. 493; People ex rel. v. President, 144 N.Y. 616; Sanner v. Patton, 155 Ill. 553; Cole v. Tucker, 164 Mass. 486.)

"This statute does not prevent the free exercise of suffrage. The voter is left free to vote for whom he pleases. Nor does the statute permit any power, 'civil or military', to interfere 'to prevent the free exercise of the right of suffrage.' Under this statute, when the voter goes to the quietude of his booth to vote he has the absolute and unqualified right to vote for whom he pleases."

CONCLUSION

It is the opinion of this department that the candidate for sheriff in the instant case cannot have his name printed on the official ballot unless he complies with Section 10241, R.S. Mo. 1929. We do not think the County Clerk has any authority to accept the \$5.00 filing fee and place his name on the ballot as an independent candidate.

Respectfully submitted,

OLLIVER W. NOLEN,
Assistant Attorney General.

APPROVED:

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

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