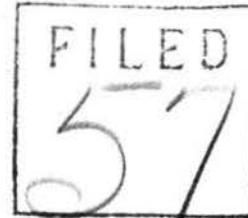


ELECTIONS:

Certificate of nomination which is not
acknowledged is faulty and should not
be accepted by the county clerk.

September 24, 1938

9-27



Honorable G. Logan Marr
Prosecuting Attorney
Morgan County
Versailles, Missouri

Dear Sir:

This department is in receipt of your opinion request dated September 13, 1938, which reads as follows:

"The enclosed copy of a petition was filed with the County Court of Morgan County, Mo, as provided for in section 10241 of the 1929 statutes. The purpose of this petition was to have William West run for office on the Independent Ticket. The County Court wanted to know if this petition was in proper form so as to justify the printing of the election ballot of the general election of November 1938, to include William West as an independent candidate. The attempt is to nominate William West as candidate for Presiding Judge of Morgan County, Missouri. Nowhere in the petition does the certificate of nomination state as to what office Mr. William West is running for. He is running for the presiding judge of what? The petition in five places nominates William West as the Presiding Judge of Morgan County, Mo.

I infer from reading this petition that William West desires and the petitioners want him to run for Presiding Judge of the County Court of Morgan County, Mo. Now the question is, has this office of presiding judge of the County Court been sufficiently defined in this petition to

authorize the County Clerk to print the name of William West, as independent candidate for presiding judge of the County Court of Morgan County, Mo.?"

The certification of nomination which accompanies your request is signed by a number of persons but the residence of none of the signers is listed nor are any of the names acknowledged.

Section 10232, R. S. Mo. 1929 provides as follows:

"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 provides as follows:

"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 10234, R. S. Mo. 1929 provides in part as follows:

"* * * * * For all other nominations to public offices, certificates of nomination shall be filed with the clerks of the county courts of the respective counties wherein the offices are to be filled by the electors."

Section 10241, R. S. Mo. 1929 provides 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 nomination of public officers otherwise than by primary election is recognized in State ex rel. Preiss v. Seibel, 295 Mo. 607, l. c. 624:

"* * * 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. * * * * *"

Section 10233, supra, provides that the name and residence of each signer shall be contained in the certificate of nomination. The attached certificate fails to meet this requirement in that the residences of the signers are missing.

However, we do not have to base our opinion that this certificate is deficient upon this ground alone. It will be noted that Section 10232, supra, provides that a certificate of nomination shall be "executed with the formalities prescribed for the execution of an instrument affecting real estate."

We quote from the case of State ex rel. O'Malley v. Lesueur, 103 Mo. 253, changing the statute numbers to comply with the sections of the Revised Statutes, 1929:

"Turning to section 3014, R. S. 1929 we find that those formalities (for the execution of an instrument affecting real estate) consists not only in the deed being executed, but in its being acknowledged, while section 3026 provides that a certificate of such acknowledgment shall be indorsed on the conveyance, and section 3027 prescribes how it shall be authenticated, and section 3029 what such certificate shall contain.

"In the present instance * * * the certificate never was in fact acknowledged; so that it was incomplete within the purview of the law, and the secretary might well have refused to file said certificate on this ground alone.* * * * *"

In view of the above authorities the question whether the certificate sufficiently states what office the candidate is nominated for becomes of little consequence since the certificate is faulty on other grounds.

CONCLUSION

It is, therefore, the opinion of this department that a certificate of nomination which is not acknowledged according to the requirements of an instrument affecting real estate is faulty and should not be accepted by the county clerk to be placed upon the ballot.

Respectfully submitted,

APPROVED:

ARTHUR O'KEEFE
Assistant Attorney General

J. E. TAYLOR
(Acting) Attorney General

AO:DA