

ELECTIONS: What constitutes filing of declaration of candidates.

June 21, 1938

Forward
Board of Election Commissioners
208 South 12th Boulevard
St. Louis, Missouri



Gentlemen:

This will acknowledge receipt of your letter of June 15, 1938, enclosing copy of an opinion by the Honorable E.H. Wayman, City Counselor, St. Louis, Missouri, and your supplemental letter of June 17, 1938, enclosing a transcript of testimony taken by the Board of Election Commissioners concerning Senator Percy Pepon's declaration as candidate for State Senator from the 30th Senatorial District on the Democratic ticket, a copy of a sworn statement by Louis J. Adamie, Manager of the office of the Democratic Central Committee of the City of St. Louis, a copy of the declaration of Senator Percy Pepon declaring himself as candidate for State Senator in the 30th Senatorial District, an excerpt from the case of O'Malley v. Lesauer, 103 Mo. 262, and a copy of the receipt from the Treasurer of the Democratic State Committee showing payment of the filing fee by Senator Pepon.

Upon these documents, you ask this department's opinion as to whether Senator Pepon's name should be placed on the official primary ballot as candidate for State Senator on the Democratic ticket from the 30th Senatorial District.

We are accepting the facts as presented and assuming that there is no dispute concerning them. These facts tend to show that on May 2, 1938, Senator Pepon lodged a declaration, in proper form and accompanied by his receipt showing he had paid his filing fee to the Democratic State Committee, with the Clerk of the Board of Election Commissioners of the City of St. Louis. This was done by and through the Manager of the office of the Democratic Central Committee of St. Louis City. The declaration was signed by Senator Pepon. This declaration has not been found among the papers of the

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Election Board, nor does any employee in said office recall having received the same. A duplicate original of this declaration was mailed to the Secretary of State by Mada Wood for Senator Pepoon.

The steps which a candidate for State Senator from a district lying wholly within the City of St. Louis must follow in order to have his name placed on the primary ballot are as follows:

(1) \$25.00 must be deposited with the Treasurer of the State or County Central Committee of the political party upon whose ticket he proposes as a candidate, and a receipt taken therefor. Section 10258, R.S. Missouri, 1929.

(2) A written declaration must be filed at least 60 days prior to the primary election substantially in the form as provided by Section 10257, R.S. Missouri, 1929.

(3) The candidate must file the receipt of the State or County Central Committee of the political party upon whose ticket he proposes as a candidate, showing he has paid his filing fee, along with the declaration. Section 10258, R.S. Missouri, 1929.

(4) The receipt and declaration above mentioned must be filed in the office of the Election Commissioner of the City of St. Louis. Section 10260, R.S. Missouri, 1929. State ex rel. v. Roach, 258 Mo. 541, State ex rel. v. Remmers, 30 S.W. 2nd 609.

It would seem that Senator Pepoon, under the facts as presented, has undoubtedly complied with each of the steps above set forth except, perhaps, as to filing his declaration and receipt with the Board of Election Commissioners in the City of St. Louis. From the facts, it appears that Mr. Louis J. Adamie took the declaration and receipt of Senator Pepoon and deposited the same with the Clerk of the Board of Election Commissioners of the City of St. Louis on May 2, 1938.

In view of this, it appears the only question which is presented is, whether the depositing of the declaration of candidacy by an agent of the candidate, in the office of the Board of Election Commissioners of the City of St. Louis, is

sufficient filing thereof, when it is not actually marked "filed" and has been misplaced.

We think the case of *State ex rel. v. Turner et al.*, 177 Mo. App. 454, is decisive of this question. The matter for determination in this case was what constitutes the filing of a bill of exceptions. The bill of exceptions was properly prepared and signed by the judge and ordered, over his signature, to be filed as part of the record in the case. The bill was, within the time granted by the court, actually delivered to the Clerk of the Circuit Court in his office with request and directions to file the same. It was received by the clerk for such purpose and deposited and retained in his office, but not actually stamped and marked "filed".

This case reviews a number of decisions in this state on this question. The court said at l.c. 461:

"The case of *Grubbs v. Cones*, 57 Mo. 83, is the leading case on this subject and the question there arose as to the time of filing a mechanic's lien notice in the clerk's office on which depended the validity of the lien sought to be enforced. The court declared the law thus: 'The filing is the actual delivery of the paper to the clerk without regard to any action that he may take thereon. If the clerk commits a clerical error, or makes a mistake in reference to the time at which he received the paper, that will not make any difference. He may indorse upon it the wrong date, or an impossible date, and still the real date of the filing will be the same. Whilst the indorsement made by the clerk will be prima facie evidence of its truth, still it is competent to show that he erred in the matter of date; and if that fact clearly appears, it is within the province of the court to make the correction. The rights of an innocent party will not be sacrificed to a mere mistake, committed by a ministerial officer'."

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The other cases reviewed in the Turner case, supra, are to the same effect. This case was certified to the Supreme Court and affirmed in 270 Mo. 49 and the ruling has been cited with approval in Carter v. Burns, 332 Mo. l.c. 1140.

Based on these cases, we think the rule in Missouri is that where an instrument is delivered to the proper officer in proper time with directions to file the same, it is filed regardless of the fact that the officer does not mark the instrument "filed".

The declaration of Senator Pepon appears to be properly executed by him and within the time required, actually delivered to the Clerk of the Election Commission in his office along with Senator Pepon's receipt for the filing fee. While nothing appears in the facts you have presented to the effect that the clerk was requested to file the declaration, undoubtedly, the clerk understood what was to be done with each declaration presented to him and needed no express request. Also, if said declaration was actually delivered to the Clerk of the Election Commission, then we assume he received it and subsequently, misplaced it.

CONCLUSION

Therefore, it is the opinion of this department, based upon the facts you have presented and those we have assumed, that the declaration of Senator Pepon as candidate for State Senator in the 30th Senatorial District was properly filed when lodged or deposited with the Clerk of the Election Commission on May 2, 1938, even though said declaration was not marked "filed" and has subsequently, been misplaced.

Respectfully submitted,

TYRE W. BURTON
Assistant Attorney General

APPROVED BY:

J.E. TAYLOR
(Acting) Attorney General

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