

ELECTIONS: Names of candidates of Socialist party must be printed in newspaper notices.

June 22, 1938

A. N. Howard
Board of Election Commissioners
208 South 12th Boulevard
St. Louis, Missouri



Gentlemen:

This department is in receipt of your request for an official opinion which reads as follows:

"There is enclosed herewith a list of the candidates who have announced themselves for the offices to be voted for at the Primary Election to be held on Tuesday, August 2, 1938. Please note the candidates on the Socialist ticket.

"There is also enclosed draft of notice of the Board, for publication, for the holding of the Primary Election, August 2, 1938, on which, following past custom, appears the notation relative to the Socialist ticket.

"The Board asks for an opinion as to whether the notation referring to the Socialist names should again be included; or will publication in three local papers for the three consecutive weeks prior to the Primary of the names and addresses of all the other candidates who have filed be in compliance with Section 10262."

The notation referred to in your request is as follows:

"Following are the names and postoffice addresses of candidates for nomination

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on the Democratic and Republican party tickets, to-wit:

"No other party tickets will be voted upon at the Primary Election.

"There being no contests on the Socialist ticket for any offices, the candidates will not be voted upon at the Primary Election, but will be declared automatically nominees thereafter to be voted upon at the General Election to be held Tuesday, the 8th day of November, 1938, to-wit:

Socialist Ticket."

Section 10262, R.S. Missouri, 1929, provides as follows:

"Such clerks shall, upon receipt thereof, publish, under the proper party designation, the title of each office, the names and addresses of all persons who shall have filed declaration papers, giving the name and address of each, the date of the primary, the hours during which the polls will be opened, and that the primary will be held at the regular polling places in each precinct. It shall be the duty of the county clerk to publish such notice for three consecutive weeks next prior to said primary."

Section 10263, R.S. Missouri, 1929, is as follows:

"Every publication required in this article shall be made in not less than

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two newspapers of general circulation in such county; one of such newspapers shall represent the political party that cast the largest vote in such county at the preceding general election, and one of such newspapers shall represent the political party that cast the next largest vote in such county at the preceding general election. In any case where the publication of notice cannot be made as hereinbefore required, it may be made in any newspaper having a general circulation in the county in which the notice is required to be published."

Section 10267a, Laws of Missouri, 1933, page 238, provides as follows:

"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."

The question presented is whether the names of the candidates of the Socialist party shall be printed in the newspapers, since there is no contest for the nominations among such candidates.

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In the last gubernatorial election in 1936, the Socialist party polled 2,807 votes out of a total of 1,817,596.

Therefore, the candidates of such party fall within the provisions of Section 10267a, supra, which provides that a person who has filed upon the party ticket which cast less than 5 per cent of the total votes cast for Governor at the last preceding election, and when not more than one person shall have filed as candidate for any office, no ballot shall be printed at the primary election. However, although no ballot has to be printed for such candidates, still the provisions of Sections 10262 and 10263, supra, are entirely different in their purpose and intent. These two provisions provide for the publication in the newspapers of "the names and addresses of all persons who shall have filed declaration papers". The purpose of these statutes was to apprise the voters of the candidates and to enable them to predetermine their choice for the forthcoming election.

As was said in *Fitzgerald v. Smith*, 174 Pac. 660 (Cal.), in which the court had before it statutes similar to those of Missouri: "The direct primary law requires for the purpose of acquainting the electors with the names of the offices for which candidates may file nomination petitions and be voted for at the primary election, that certain notices shall be given".

Moreover, if the names of the candidates of the Socialist party are not published or made known until before the general election, then many voters, being unaware of who such candidates are, might vote in the primary election for the candidates of one of the two major parties and thereby bring themselves within the scope of Section 10271, R.S. Missouri, 1929, which provides that a person attempting to vote other than the ticket of the party with which he is known to be affiliated, when challenged at the primary election, must obligate himself by oath to support the party nominees of the ticket he is voting.

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CONCLUSION

It is, therefore, the opinion of this department that the names of the candidates of the Socialist party must be printed in the notices required by Sections 10262 and 10263, R.S. Missouri, 1929, but that the same do not have to be placed upon a ballot at the primary election.

Respectfully submitted,

ARTHUR O'KEEFE
Assistant Attorney General

APPROVED By:

J.E. TAYLOR
(Acting) Attorney General

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