

**ELECTIONS:** Certificates of nomination of Independent candidates signed by electors must be acknowledged and follow Section 10241 R. S. Missouri, 1929.

October 18, 1940

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Hon. H. D. Allison  
County Clerk  
Buchanan County  
St. Joseph, Missouri

Dear Sir:

We acknowledge receipt of your request for an opinion as to the validity of the following petition which has been filed in your office, for the purpose of placing the name of E. C. Clary on the ballot as an Independent candidate for constable of Washington township, Buchanan County, Missouri:

"We, the undersigned voters, Washington Township, Buchanan County, Missouri, respectfully petition that the name of E. C. Clary be listed on the official Missouri ballot as an independent candidate for constable, Washington Township, Buchanan County, Missouri. We further promise to vote for and support E. C. Clary."

Under this petition are the required number of names of voters.

The two statutes to be considered are Section 10232 R. S. Missouri, 1929, which is 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."

And, Section 10241 R. S. Missouri, 1929, which reads 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."

It appears under the first section above that the primary requirement of a certificate of nomination signed by electors is that it be executed with the formalities prescribed for the execution of an instrument affecting real estate. This provision has been discussed in State ex rel v. Lesueur, 136 Mo. 452, l.c. 459, as follows:

"By the terms of our statute, section

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4757, Revised Statutes, 1889, a certificate of nomination by electors must be 'executed with the formalities prescribed for the execution of an instrument affecting real estate.' By section 2408, Revised Statutes, 1889, the certificate of acknowledgment shall state the act of acknowledgment and that the person making the same was personally known to the officer granting the certificate to be the person whose name is subscribed to the instrument as a party thereto. Unless the petition was properly certified by the requisite number of electors the secretary had no right to file it and place the ticket on the official ballot. State ex rel. v. Lesueur, 103 Mo. 253; People ex rel. Klinker v. Board Pol. Com'rs, 31 N. Y. Supp. 469; People ex rel. Oliver v. Board Pol. Com'rs. 31 N. Y. Supp. 467."

You do not mention in your request that any acknowledgment whatever appears on the petition on file in your office and under consideration. If such acknowledgment does not appear the petition is fatally defective under the above authorities.

There appears to be another fatal defect in the petition. A reading of Section 10241, supra, discloses that all signers of the petition must declare 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 petition submitted to us contains only the statement that the signers of the petition will support the candidate named.

In State ex rel Preiss v. Seibel, 246 S. W. 288, a similar petition was under scrutiny by our Supreme Court. What is now Section 10241 R. S. Missouri, 1929,

has been carried forward from former revisions of our statutes and was carried in the statutes of 1919 as Section 4811, being identical with the former, except that at that time only one per cent of the electors residing within a political division of the State must sign the certificate of nomination. We find the following in the opinion of the Court: l. c. 293.

"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 1 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 nonpartisan or nonpolitical ticket. The only restriction upon such nomination is that the electors so signing a certificate of nomination must declare in the certificate that they are bona fide supporters of the candidates sought to be nominated, and have not aided and will not aid in the nomination of any other candidate for the same office." (Underscoring ours.)

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CONCLUSION.

In view of the foregoing authorities, and for the reasons above stated, it is the conclusion of this department that the petition in the form set out in your request for an opinion is insufficient because it does not appear to be acknowledged by the electors who signed the same and because the signing electors have not declared that they did not aid in the nomination of any other candidate for the same office.

Respectfully submitted,

ROBERT L. HYDER  
Assistant Attorney General

APPROVED:

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COVELL R. HEWITT  
(Acting) Attorney General

RLH:RW