

ELECTIONS: Powers and duties of party committees in filling vacancies after the primary.

July 3, 1942



Honorable Dwight H. Brown
Secretary of State
Jefferson City, Missouri

Dear Sir:

This is in reply to yours of recent date wherein you request an opinion on the following statement of facts:

"Amendments to election laws passed at the 1941 session of the General Assembly seem to prevent a party committee from filling its ticket, except when vacancies are caused by death or resignation.

"Today I am in receipt of inquiry from Mrs. J. W. Shankland, Chairman Missouri Prohibition Committee, asking:

"'Would it be possible for the Prohibition Party committees, state, city and county to fill in vacancies on the Prohibition ticket after the primary, if so what would be the procedure?'

"In view of the recent amendments, I am in doubt. May I be favored with your opinion in order that I may answer the question above quoted?"

The primary election laws to which you refer, as amended in 1941, provide as follows: (Section 11562, page 353, Laws of Missouri, 1941)

"Vacancies occurring after the holding of any primary and resulting from the death or resignation, and not otherwise, of the nominee of a party at such primary, shall be filled by

the party committee of the district, county, or state, as the case may be: Provided, however, that no name shall be allowed on any ticket until the required fee shall have been paid."

Prior to this amendment it seems that the law authorized the party committees to fill the ticket in cases where no person offers himself as a candidate before the primary. This statute, as amended, withdraws from party committees the authority to make such nominations. The only instance in which the committee has power to place a name on the ticket is when the nominee or the person who filed dies or resigns.

In Volume 20 Corpus Juris at page 115, par. 113, the general rule as to conditions imposed on candidates for primary elections is stated as follows:

"The primary election laws of the various states impose certain requirements on a candidate at a primary election, such as filing with a designated official, a certain number of days before the primary, a paper in some prescribed form announcing his candidacy, swearing that he is qualified, making a statement of his membership in, and support of, the party whose nomination he seeks, causing his name to be printed on the official ballot as a candidate for the nomination, and filing the names of persons selected as his campaign committee. Such requirements are mandatory, and compliance with them is essential to enable the candidate to be voted for at the primary election and to have his name printed on the official ballot at the general election as the nominee of one of the principal political parties. A person who does not comply therewith does not become the nominee of a political party by the writing or pasting of his name on the printed ballot, although he receives a larger

number of votes than his opponents;
* * * * *

By a review of the primary election laws of this state and particularly the Amendment of 1941, we think the duties imposed on the candidate who seeks nomination comes within the foregoing rule.

CONCLUSION

From the foregoing it is the opinion of this department that no party committee would be authorized to fill a vacancy on its ticket after the primary, except in a case where a vacancy occurs after the holding of the primary and such vacancy must be caused by death or resignation of the candidate who has complied with the statute in filing.

Respectfully submitted

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APPROVED:

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