

ELECTIONS - REPRESENTATIVES
AND SENATORS - UNEXPIRED
TERMS:

Mode of electing senators
and representatives for
unexpired terms, and mode
of nominating them.

July 7, 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 from this Department upon the following question:

"May I be favored with your opinion as to how candidates in 1st and 26th senatorial districts may get their names on the special election ballot? Also candidates for the lower house? What duties has the secretary of state in connection with these special elections? How is the senatorial district party committee in 1st and 26th districts made up?"

Section 10, of Article IV of the Constitution of Missouri, provides that senators and representatives shall be elected certain years.

Section 14 of said Article IV provides as follows:

"Writs of election to fill such vacancies as may occur in either house of the General Assembly shall be issued by the Governor."

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According to your request it seems that some candidates have the idea that their names may be placed on the primary ballot, under the primary law. It also appears from your letter that the Governor, following the provisions of said Section 14, of Article IV of the Constitution of Missouri, has issued writs of special elections in two senatorial districts and provided that the election shall be held on August 4th, which is the same day as the holding of the primary. Apparently, the reason for the Governor issuing his writs of special elections in these districts is that the present incumbents have resigned. We assume that the provisions of Section 12858 R. S. Missouri, 1939, applies. This section provides, in part, as follows:

"If any member elected to either house of the general assembly shall resign in the recess thereof, he shall address and transmit his resignation, in writing, to the governor; * * * * *"

Section 12859 R. S. Missouri, 1939, which relates to the same subject matter, provides as follows:

"Whenever the governor shall receive any resignation or notice of vacancy, or when he shall be satisfied of the death of any member of either house, during the recess, he shall, without delay, issue a writ of election to supply such vacancy."

Under the provisions of Section 12860 R. S. Missouri, 1939, the writ of election is directed to the sheriff of the county first named in the senatorial district, in districts which contain more than one county. Then, under the provisions of Section 12861 R. S. Missouri, 1939, the sheriff is directed to carry out the directions of the writ of election. This section reads as

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follows:

"The sheriff to whom any writ of election shall be delivered shall cause the election to supply such vacancy to be held within the limits composing the county or district at the time of the next preceding general election, and shall issue his proclamation or notice for holding the election accordingly, and transmit a copy thereof, together with a copy of the writ, to the sheriff of each of the counties within which any part of such old county or district may lie, who shall cause copies of such notice to be put up, and the election to be held accordingly, in such parts of their respective counties as composed a part of the old county or district for which the election is to be held, at the last preceding general election; and the returns shall be made and the certificate of election granted in all things as if no division had taken place."

Said Sections 12858 to 12861, R. S. Missouri, 1939, inclusive, are special statutes referring to elections to fill vacancies in either house of the general assembly. Under said Section 10 of Article IV of the Constitution of Missouri, elections for senators and representatives are held only in certain years. In case of a vacancy in such office then the provisions of said Section 14, of Article IV of the Constitution of Missouri apply.

The special election provided for under the foregoing statutes is separate, and distinct, from the primary, even though it may be held on the same day. This rule is announced in Vol. 20, C. J., p. 57, in the following language:

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" * * * Also the fact that an election on a proposition is set for the day of the holding of a state primary does not alter its status as a special election held at a time selected by certain public officials as distinguished from a general election held at a time designated by statute."

Section 11492 R. S. Missouri, 1939, provides as follows:

"When the governor issues a writ of election to fill any vacancy, he shall mention in said writ how many days, to be not less than ten, the sheriff shall give notice thereof."

Section 11516 R. S. Missouri, 1939, provides as follows:

"Such special election, except as provided in the preceding section, shall, as near as possible, be conducted in the same manner, and be governed by the same laws, as a general election."

From these sections it would appear that a special election is conducted in the same manner and governed by the same law as a general election is, in so far as it is possible to do so, and so long as it is not in conflict with some other statutory provision.

We fail to find any statutory provision, pertaining to special elections, except those set out in said Sections 12858 to 12861, supra. That being the case it would seem that the Secretary of State would perform the same functions in regard to a special election that he does in regard to a general election.

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Taking up your question as to how a candidate for the senate or house of representatives may get his name placed on the ballot for the special election, we note that Section 11537 R. S. Missouri, 1939, deals with nominations for office and with reference to the certification of the names of candidates nominated at a primary. It provides that no certificate shall contain the name of more than one candidate for each office. We think this refers to the nomination of candidates for the general election.

Section 11595 R. S. Missouri, 1939, pertaining to the form of ballot for use in general elections, provides, in part, as follows:

" * * * The names of all candidates to be voted for in each election district or precinct shall be printed on one ballot; all nominations of any political party or group of petitioners being placed under the party name designated by them in their certificates of nomination or petitions, and the ballot shall contain no other names, * * * ."

This leads to the conclusion that at an election to be held where an official is to be selected by ballot, the name of only one person can appear on such ballot as the candidate of any political party or a candidate of any group, or groups of petitioners, according to the number of petitioning groups.

There is a well recognized and defined theory, philosophy and principle of law that the citizens of our Nation or a State thereof have the qualified right to express their allegiance to certain principles as adopted by an existing political party or as may be declared by certain allowed petitioning groups. See State ex rel v. Kortjohn, 246 Mo. 34. As a practical matter this expression can only be given force and effect, and the voter could select among the various and contending single candidates representing the various and contending political views and creeds, where each party or group was represented by but one candidate.

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At the special election to be held on August 4th, next, voters are entitled to choose between a candidate selected by each of the political parties, as well as the candidate, or candidates selected by such petitioning group or groups, as may lawfully procure the name of a candidate or candidates on the ballot and the ballot shall contain no other name or names than the representative candidate of the existing political parties, group or groups, as may have been selected or nominated, and, according to Section 11595, supra, the party name shall be printed above the name of the representative candidates, and the party candidates shall be in separate columns with a heavy line between the names of each party list or lists of each petitioning group, or groups.

Section 11546 R. S. Missouri, 1939, dealing with primary elections, specifically provides that the provisions of Article 5, of Chapter 76, of which this Section is a part, shall not apply to special elections.

Therefore, the nominations provided for under the general primary election law would not be applicable here.

Section 11562, as amended in Laws of Missouri, 1941, P. 353, provides as follows:

"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."

Section 11538, Laws of Missouri, 1941, P. 354, provides, in part, as follows:

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"Certificates to be filed, when. -
Certificates of nominations filed with
the secretary of state shall be filed
not more than sixty and not less than
thirty days before the day fixed by
law for the election of the person in
nomination. Certificates of nomination
herein directed to be filed with the
clerk of the county court of each county
shall be filed not more than sixty days
and not less than fifteen days before
election: Provided, that in case of any
vacancy in said nomination, by resigna-
tion or death and not otherwise, the
central committee, or a convention called
for that purpose, of the party on whose
ticket such vacancy may occur, may se-
lect and certify to the secretary of
state, county clerk of board of elec-
tion commissioners the name or names
of candidates to fill such vacancy;
Provided, that the certificates of
nomination to fill vacancy shall be
filed with the secretary of state not
later than fifteen days before the day
fixed by law for the election of the
persons in nomination, and with the
board of election commissioners or
county clerk not later than ten days
before such election: * * * * ."

Apparently the lawmakers by the 1941 amendments to
Sections 11562 and 11538, R. S. Missouri, 1939, provided
that the party committee could only fill a vacancy on a
ticket nominated, and, after the primary, when the vacancy
on such ticket is caused by death or resignation. It will
be noted by reference to these sections that they provide
for the filling of a vacancy in case of the death or
resignation, and not otherwise. Since the vacancy in the
office of state senator occurred before the primary, and,
since the primary law, Section 11546, R. S. Missouri,
1939, provides that it shall not apply to special elec-
tions, we do not think the provisions of said Sections

11562 and 11538, R. S. Missouri, 1939, as amended, could apply here.

In discussing the provisions of Section 4823 R. S. Missouri, 1919, which is Section 11546 R. S. Missouri, 1939, the Supreme Court, in State ex rel Kimbrell v. Becker, 291 Mo. 409, at l. c. 427 said:

"By virtue of Section 4823, Revised Statutes 1919, all nominations for elective office must be made by primary election, except that this provision does not apply to special elections to fill vacancies, nor to county superintendents of schools, nor to city officers not elected at a general state election, nor to town, village or school district officers. Neither is it applied to the nomination of candidates for presidential elector. The effect of these exceptions is that there still exist several classes of officers who lawfully may be and frequently are nominated by conventions of delegates.
* * * * *

It will be noted by this statement that the courts then recognized the fact that officers in some cases are nominated by conventions of delegates.

It might be contended that the provisions of Sections 11525 and 11534, R. S. Missouri, 1939, are applicable here. Said Section 11525, supra, states that nominations to public office may be made by primary election, or by certificates of nomination made by elector. Section 11534, supra, speaks of such a certificate of nomination otherwise than by primary, and provides that such nomination may be made by a certificate of nomination signed by a certain number of voters.

In speaking of the application of these statutes to such a nomination, the court, in State ex rel v. Seibel, 246 S. W. 288, at l. c. 293, said:

"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."

This principle is also stated by the court in *State ex rel v. Kortjohn*, 246 Mo. 34.

Since our statutes are silent as to nominations for special elections, we think the principle as set out in 20 C. J., p. 104, sec. 90, is applicable. This section reads as follows:

" * * * * In the absence of constitutional or statutory provisions to the contrary, the authorities of a political party, such as state and county executive committees may, in accordance with party usage, make and enforce reasonable regulations relating to nominations within the party; and some statutes regulating the mode of nominations, except nominations for certain local offices, provide that they shall be made in the manner prescribed by party committees. Some statutes are construed to provide an exclusive method or methods for making nominations for certain offices, but statutes prescribing an exclusive mode of making

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original nominations are construed to apply only to nominations of candidates to be voted for at general elections, and to leave the nomination of candidates to be voted for at special elections subject to existing laws or future legislation."

Applying this rule here, in the absence of statutory provisions, the nominations of candidates for special elections remain subject to existing law or future legislation. Prior to the enactment of our primary laws, nominations were made by political conventions.

The lawmakers in 1941 (Laws of Missouri, 1941, page 355, Sec. 11539) recognized the fact that a political party may make a nomination by its central committee. In that statute it authorized its central committee to make a nomination to fill a vacancy on a ticket previously nominated. However, this Section applies only to primaries, but, as stated in the Becker case, supra, there still exists cases where officers may lawfully be nominated by conventions of delegates.

CONCLUSION

We are, therefore, of the opinion that candidates for the office of state senator, to be elected at a special election, may be nominated by the senatorial party committees of the senatorial district, or, if a person desires to run on an independent or non-political ticket, he may comply with the provisions of Section 11534 R. S. Missouri, 1939, and get his name placed on the ticket in that manner.

After the nominations are made by the political committee, or by the certificate, the names of the nominated candidates should be certified to the secretary

of state, in accordance with the provisions of Sections 11526 and 11527, R. S. Missouri, 1939. It will also be noted that by the provisions of Section 11527, this certificate of nomination should be executed with the formalities prescribed for the execution of an instrument effecting real estate.

On your last question, as to how the senatorial district party committee of the first and twenty-sixth senatorial districts are made up, we refer you to Section 11576 R. S. Missouri, 1939, which provides as follows:

"In all counties of this state now, or hereafter, having more than one legislative district, in addition to the county chairman and vice-chairman, as provided in section 11575, there shall be elected a chairman and a vice-chairman, one of whom shall be a woman, for each such legislative district, and the county committee and legislative district committees shall each at the same time elect a secretary and a treasurer, one of whom shall be a woman, but who may, or may not be, members of said committee, and the chairman and the vice-chairman so elected shall by virtue thereof become members of the party congressional, senatorial, and judicial committees of the district of which their county is a part: Provided, that if any such congressional, senatorial or judicial district shall consist wholly of one county, then the members of such county committee shall constitute the congressional, senatorial, and judicial committee, of the district composed of such county: * * * * *

Therefore, according to the provisions of this section, the senatorial district party committee of a senatorial district is composed of the chairman and

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vice-chairman of each county committee of the counties
which make up such senatorial district.

Respectfully submitted

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APPROVED:

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