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declare that if nominated and elected to such office I will qualify.'

"Immediately thereafter the said Chas. Barrett read and signed said declaration in said County Clerk's Office on said date of April 24th, 1944. The deputy County Clerk then told Mr. Barrett to go to the bank and get a receipt for \$5.00 and then return said declaration. Mr. Barrett then went to the New Era Bank, of which bank the president is treasurer of the Madison County Democratic Central Committee, and at that time Mr. Barrett was informed that said treasurer was out of town having been subpoenaed for a trial in Pine Bluff, Arkansas. Mr. Barrett then, on said date of April 24th, gave said declaration to Mr. O. J. Ferguson, the publisher of the Democrat-News in Fredericktown, Missouri, together with the \$5.00 filing fee. Mr. Barrett then instructed Mr. Ferguson to get the receipt from Mr. Whitener, Treasurer of the Democrat Central Committee and return same to the County Clerk, together with the declaration. Mr. Whitener didn't return to Fredericktown until April 26th, 1944. Mr. Ferguson deposited the \$5.00 to the credit of Madison County Central Committee in the New Era Bank of Fredericktown, Missouri, on the 26th day of April, 1944, and took the duplicate deposit receipt together with the Candidate's Declaration to the office of the County Clerk on said date of April 26th, 1944, at which time the Deputy County Clerk stamped said declaration filed April 26th, 1944."

Section 11550, Revised Statutes of Missouri 1939, at the special session of the legislature called by the Governor in 1944, designated as the 62nd General Assembly, Extra Session, repealed Section 11550 and re-enacted said section, which section reads as follows: (in part)

"The name of no candidate shall be printed upon any official ballot at any primary election, unless such candidate has on or before the last Tuesday of April preceding such primary filed a written declaration, as provided in this article, \* \* \* \* \*"

Section 11551, Revised Statutes of Missouri 1939, was not disturbed by the Extra Session of the legislature, a portion of which section we quote as follows:

"Each candidate, except for a township office, previous to filing declaration papers, as in this article prescribed, shall pay to the treasurer of the state or county central committee of the political party upon whose ticket he proposes as a candidate and seeks nomination, a certain sum of money, as follows, to-wit: \* \* \* \*. To the treasurer of the county central committee - five dollars, if he be a candidate for state representative or any county office; take a receipt therefor, and file such receipt with and at the time he files his declaration papers. The said sums of money, so paid by the several candidates, shall be evidence of their good faith in filing said declaration papers, \* \* \* \*."

It will be observed by comparing Section 11550, passed by the Extra Session, that it is nearly identical with Section 11550, Revised Statutes of Missouri 1939, except that the last day for filing was designated in the new section as the last Tuesday of April. Therefore, the authorities construing Section 11550 and Section 11551, Revised Statutes of Missouri 1939, are applicable to Section 11550 enacted at the extra session of the legislature.

We call attention to the case of State ex rel. Haller v. Arnold, 277 Mo., page 474, l.c. 480, wherein the court said:

" \* \* \* \* That question is: Does Section 6015 of the act supra, above quoted, absolutely require as a condition precedent to the placing by the Board of Election Commissioners of the name of a proposed non-partisan candidate on the official ballot, that the receipt of the City Treasurer for the deposit of the sum of sixty dollars shall be filed along with, and contemporaneously with the certificate of nomination of such proposed candidate?

"We have concluded that is does not. The affirmative of the question stated and presented by the facts here at issue would in our opinion and in the light of the language of the above section be too narrow a view to take of the meaning of that section. Such a view would inevitably restrict and circumscribe the right of a citizen to be a candidate for office within such limits

and hedge the privilege about with such conditions as materially to impinge upon the guarantee of the Constitution that 'all elections shall be free and open' (Section 9, Article 2, Constitution 1875.) It will be noted that the statute uses the word 'with' only, without qualifying this word by the word 'contemporaneously' or other similar word connoting, or importing, simultaneity of filing of both the receipt for the deposit and the certificate of nomination. Clearly, the language used imports and requires the filing of this receipt at the same place and with the same officer with whom such certificate of nomination is filed. \* \* \* \* \*

"It is manifest that any eligible candidate for office is entitled to the whole of the last day allowed by law within which to submit himself to the electors for their suffrages. In a case like this, where the proposed candidate is in no wise at fault (the argument that he should have made up his mind earlier obviously having no weight, by reason of the truth of the premise last above) ought he to be deprived of the privilege of running for a public office by the mere adventitious fact of the absence from his office, or from the city, or from the state, of the only officer from whom the required official receipt can under the letter of the law be obtained? The Treasurer might be ill, or a case can be imagined where the death of the Treasurer might occur on the last day for filing prescribed by the letter of the statute, and wherein it would be impossible to appoint his successor in time to have such successor accept the required deposit and issue the required receipt therefor. \* \* \* \* \*  
\* \* \* all that should be required is the earliest possible payment and obtention and filing thereafter of such receipt: provided, such filing of the receipt shall be in time to allow of the performance by the Board of Election Commissioners of the very first of the ensuing duties incumbent upon them by law. \* \* \* \* \*

The view and ruling set forth in the case supra is fully sustained in the case of State ex rel. Huse v. Haden, 163 S.W. (2d) 946, 349 Mo. 982. We shall not quote from this latter case

for the reason that said opinion reiterates the quotation hereto set forth from the Haller case.

Now turning to the opinion request we note that Mr. Charles Barrett read and signed the statutory candidate's declaration in the County Clerk's office on the 24th day of April, 1944. The question then presents itself as to whether or not this was tantamount to a filing with the clerk at that time.

In this connection we call attention to the case of State v. Brubaker, 177 S.W. (2d) 623, 1.c. 624, wherein the court had this to say:

"\* \* \* \* \* Appellant's attorney filed an affidavit which reads as follows:

"'Before me, the undersigned, personally appeared A. H. Garner, attorney for the defendant in the above entitled cause, who upon his oath states that within four days of October 15, 1942, he lodged in the circuit clerk's office of Newton County, Missouri, a motion for new trial, which the clerk advised him could not be filed under their rules, except when court was in session and that the clerk would keep said motion and have the court note it on his docket when he met pursuant to adjournment, and that he had no authority to file it as that was left up to the court.'

"The only answer to that affidavit is the following statement by the circuit clerk: 'Motions lodged in my office when Court is adjourned are not noted on the Judge's Docket until the Court meets pursuant to adjournment.'

"That statement lends some support to appellant's contention. We are not holding, however, that appellant has made a sufficient showing in this case for us to disregard the record as certified to this court. However, if the charge of appellant as to the practice and rule of the court above referred to is true, then certainly there exists a gross misunderstanding as to the circuit clerk's duties with reference to the filing of papers by litigants in pending suits. Section 4125, Mo. Rev. St. (1939), Mo. R.S.A., requires motions for new trial to be filed within four

days unless further time is granted. If a defendant deposits such motion with the clerk of the circuit court within the four days he has complied with the law. The depositing of the motion with the clerk constitutes a filing. The record entry or the stamp of the clerk on the motion only constitutes evidence of the filing. See *Grubb v. Cones*, 57 Mo. 83; *State ex rel. Chester, P. & S. G. R. Co. v. Turner*, 270 Mo. 49, 191 S.W. 987. The clerk must make some record of the filing of a paper when it is presented to him. He has no discretion in this matter. See *Swainson v. Bishop*, 52 Mo. 227. Note also the reading of section 944, Mo. Rev. St. (1939), Mo. R.S.A.: \* \* \* \* \*

Upon this point it is the view of this department that there was a substantial compliance with Section 11550, enacted by the 62nd General Assembly (1944), with reference to the filing of the candidate's declaration with the County Clerk of Madison County, Missouri, as of date April 24, 1944.

We now turn to the question of whether or not Mr. Charles Barrett complied with Section 11551, Revised Statutes of Missouri, 1939, which section has to do with paying the filing fee and obtaining a receipt therefor from the Treasurer of the County Central Committee of the political party upon whose ticket he proposes as a candidate and seeks nomination.

In this connection we call attention to the case of *State ex rel. Dodd et al. v. Dye*, 163 S.W. (2d) 1055, l.c. 1057, wherein the court said:

"The receipts for the filing fees were not filed simultaneously with the declarations. Does this render the declaration void? We think not, and especially so since the agreed statement of facts shows that the fees were paid June 1, and the receipts were later filed with the respondent showing that the filing fees had been paid prior to the filing of the declarations. The receipts, at most, are evidences of payment and the time of payment. These were filed with the respondent before the time to print the ballots, and in view of the earlier payments, as shown by the receipts later filed with the respondent and accepted and marked filed by

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him, we think it is too technical on the part of the respondent to refuse to act, when he had evidence to show that the fees were actually paid before the declarations were filed.

"We think we are sustained in this conclusion by the following cases by our Supreme Court: State ex rel. Haller v. Arnold, 277 Mo. 474, 210 S.W. 374, 375; State ex rel. Neu v. Waechter et al., 332 Mo. 574, 58 S.W. 2d 971, and State ex rel. Preisler v. Woodward et al., 340 Mo. 906, 105 S.W. 2d 912."

From the reading of the Dye case, supra, together with the Haller case and the Haden case, supra, it is our view that Mr. Barrett made a substantial compliance with Section 11551 because of the fact that he did all that was humanly possible, according to the statement in your opinion request, to pay the \$5.00 filing fee and procure the necessary receipt.

#### CONCLUSION

It is the opinion of this department that the name of Charles Barrett, resident of Madison County, Missouri, shall be placed on the Democrat ticket to be voted at the August primary election as a candidate for the office of Representative of Madison County, Missouri.

Respectfully submitted,

B. RICHARDS CREECH  
Assistant Attorney General

APPROVED:

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ROY McKITTRICK  
Attorney General

BRC:ml