

ELECTIONS: Who entitled to be considered candidates;
what is a proper declaration of
PRIMARIES: candidacy.



July 1, 1946

7-5

Mr. Elyn Bradford
Prosecuting Attorney
Phelps County
Rolla, Missouri

Dear Sir:

This acknowledges your request, which is as follows:

"I would very much appreciate having an official opinion from your office as to the following state of facts:

"On the last day for filing declarations of candidacy, that is, on April 30, there was filed in the office of the County Clerk of Phelps County the declaration of a certain individual as a Republican candidate for the office of County Treasurer. The name of this individual was written on the declaration and brought in by another party and filed by such other party. The declaration was not signed by anybody as an agent of the candidate, but the name of the candidate was written on the declaration as if he himself had signed it.

"A few days after the 30th of April and after the expiration of the date for filing such declarations, the individual who was supposed to be a candidate appeared in the office of the County Clerk and stated to the County Clerk he had not signed the declaration, and that he was not a candidate. Over a month later, this same individual wrote the County Clerk a letter in which he requested that his name appear on the ballot as a candidate in accordance with

the declaration that had been previously filed, and saying that he authorized the Clerk to put his name on the ticket. The letter was written in the present tense and did not state that he had authorized the party who filed the declaration to do so at the time that it was done on April 30.

"The question now is whether under the provisions of Section #11550 of Laws of Missouri, 1944, Page 25, there has been a valid filing by this candidate. There is no question but what he himself did not sign the declaration, and he did not authorize such declaration to be filed in his behalf at the time this occurred. He wholly disclaimed any responsibility for the filing in a personal conversation with the County Clerk, but thereafter requested in writing that his name appear on the ballot as a candidate.

"In view of the fact that sample ballots will be printed by the County Clerk in the near future, I would appreciate receiving this opinion as soon as you can conveniently prepare it and send it to me."

Replying to the same, Section 11550, Laws of Missouri, 1944, Extra Session, provides as follows (omitting form):

"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, stating his full name, residence, office for which he proposes as a candidate, the party upon whose ticket he is to be a candidate, that if nominated and elected to such office he will qualify, and such declaration shall be in substantially the following form:

* * * * *

In the case of State v. Arnold, 210 S.W. 374, 277 Mo. 474, our Supreme Court, en banc (1919), decided a case where the petitioner desired to file as a candidate but was unable to find the officer (treasurer) to make payment to and get receipt on the last day of filing, and on the day following did locate him and made tender and was refused. In ruling the petitioner was entitled to file, the court said:

"In such case the untrammelled constitutional privilege of all eligible persons to become candidates for office requires us, if we are to escape holding this statute invalid for that it contravenes the spirit and the letter of the Constitution in denying this privilege, to say that, if the proposed candidate be in no wise in default, and the death of the treasurer, or the latter's illness, or his absence from his office, from the city, or from the state, shall prevent the making of the required deposit and the obtention of the required receipt on the day prescribed by the letter of the statute, 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 fair, just, and equitable construction by this court of the election laws and machinery of this state in the analogous cases of Wance v. Kearby, 251 Mo. 374, 158 S.W. 629, and State ex rel. v. Seibel, 262 Mo. 220, 171 S.W. 69, ruled by this court in opinions by Lamm, C. J., requires such a construction of this statute at our hands. The demurrer should be overruled."

In the case of State ex rel. Todd v. Dye (No. App.), 163 S.W. (2d) 1055, the Springfield Court of Appeals, in 1942, held that the receipts need not necessarily be filed concurrently with the declaration. There the receipts, bearing date June 1, 1942, were deposited with the county clerk July 3,

1942, and that was by the court held to be compliance in that respect. The other point there ruled was that if the signer for another had authority from that other to sign the "other" name to the declaration, such signing will be approved by the court. That case, from the writer's viewpoint, stretches the law to uphold the filing, and if it had been certified to the Supreme Court it is doubtful whether it would be sustained. But giving full faith and credit to the opinion of the Court of Appeals, it still falls far short of holding your man to have complied with the statute, because he never signed the declaration, nor did he authorize the one who did sign for him. In effect, the signing by another without consent of the proposed candidate is very close to, if not in fact, a forgery.

Under the facts as you state them, and under the law as declared by our Supreme Court, en banc, in the Haller case, supra, the man who now seeks to be placed on the ticket as a candidate was in default; he had not done the things required by the law in order to file. On the contrary he had expressly repudiated the filing.

Your letter is silent as to whether he filed a receipt or paid the appropriate fee. The primary law has as one of its main purposes the requirement about filing, so that the public and other candidates may not be entrapped. It is a wise provision that the law requires the field to be made up for a reasonable time, provided by statute, and the statute should be substantially complied with. That was not done in the case you state.

Conclusion.

It is our opinion that timely filing a declaration of candidacy, bearing what purports to be the signature of the declarant but which was in fact not his signature and was not authorized, and which signature he afterward disclaimed any responsibility for, is not compliance with the statute prescribing the method of filing a declaration of candidacy,

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and does not entitle the party to have his name printed as a candidate on the forthcoming primary ballot.

Very truly yours,

DRAKE WATSON
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

DW:ml.