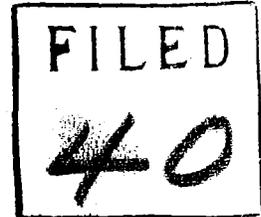


ELECTIONS: Names of persons written in on a primary ballot should not be placed upon the official ballot for the general election.

September 13, 1946

FILED 40

Honorable David W. Hill
Prosecuting Attorney
Butler County
Poplar Bluff, Missouri



Dear Sir:

We hereby acknowledge receipt of your letter of recent date requesting an opinion of this department, which reads as follows:

"At the coming general election, must the county clerk place on the printed ballots names of persons whose names were written in the primary ballots when such persons had not filed any declaration of candidacy, and did not have their names printed on the primary ballot?

"The county clerk desires an early opinion."

The county clerk, in having the ballots printed for the general election, must follow Section 11595, R. S. Mo. 1939, which provides, in part, as follows:

"Every ballot printed under the provisions of this article shall contain the names of every candidate whose nomination for any office specified on the ballot has been certified or filed according to the provisions of this chapter, and no other names. * * * *"

From the above quotation it will be noted that before a county clerk may put a name on a ballot a person must have been nominated and said nomination certified in accordance with Chapter 76, Revised Statutes of Missouri 1939.

Except in the event of a vacancy created by death or resignation, there are only two ways in which a candidate may be placed in nomination. First, by virtue of Section 11525, R. S. Mo. 1939, which provides:

"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."

Secondly, by virtue of Section 11534, R. S. Mo. 1939, which provides:

"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."

The persons referred to in your request should not have been certified because they were not nominated in accordance

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with the election laws of this State. Senate Bill No. 10, of the 63rd General Assembly, which provides for the manner of voting in a primary, provides, in part, as follows:

"* * * At primary elections at which committeemen or committeewomen of any party are to be elected, in addition to the names of candidates for said offices printed on said ballot, there shall be printed thereon at least one blank line with a square to the left of the same, as hereinbefore specified, for the purpose of allowing the voter to write in the name of his choice for said office. As nearly as practicable, the ballot shall be in the form described in Section 11595 of the Revised Statutes of Missouri, 1939. At the head of each such ticket, immediately following the date of such election, shall be printed the following: 'Instruction to voters: Place an X in the square opposite the name of the person for whom you wish to vote'. The voter shall cast his vote in accordance with this instruction and shall vote in no other manner. * * * * *"

It is clear from the above portion of Senate Bill No. 10 that in the primary a "write-in" vote is only valid when cast for a committeeman or committeewoman.

Conclusion

Therefore, it is the opinion of this department that the county clerk should not place the names of persons on the ballot for the general election whose names were "written in" on the primary ballots, when such persons had not filed any declaration of candidacy.

Respectfully submitted,

PERSHING WILSON
Assistant Attorney General

APPROVED:

J. E. TAYLOR
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