ELECTIONS: County committees may fill in candidates for office of county clerk at August 6, 1946, primary election.
NOMINATIONS:

FILED
83

July 30, 1946

9/77

Honorable J. D. Smoot
Prosecuting Attorney
Memphis, Missouri

Dear Sir:

Receipt of your request for an opinion is hereby acknowledged, which reads as follows:

> "I would like to have the opinion of your office relative to the authority of the County Committee filling in the ticket for the Office of County Clerk:
>
> "At the date for the filing of Declarations of Candidates, the legislature had failed to enact legislation creating the office of County Clerk and the outlook at the time was that that office would terminate on July 1, 1946. Thereafter and after the last date provided by law for the filing of declarations for office, the legislature enacted a law creating the Office of County Clerk which bill was approved and signed by the Governor.
>
> "The question is, Can the County Committee of either political party fill in a candidate for such office when no person filed a declaration as a candidate for the office?"

We note in Senate Bill No. 433, which is a bill for the creation of the office of clerks of the county court, and which was approved by the Governor on July 12, 1946, with an emergency clause, that Section 25 thereof provides:

> "All persons who filed for the office of county clerk in the several counties on or before April

> 30, 1946, shall have their names printed on the official primary election ballots to be voted at the primary election to be held in August, 1946."

If any such persons have filed for the office of the county clerk on or before April 30, 1946, this section, of course, will apply.

However, if no such persons were filed for that office prior to that date, the situation is comparable to that found in the case of State ex rel. v. Kortjohn, 150 S.W. 1060, 246 Mo. 34. In that case, subsequently to the Republican National Convention in June, 1912, a new political organization came into being, known as the "Progressive Party." Members of the new party sought to have the Board of Election Commissioners of St. Louis place their names on the official ballot. The Board refused to do so. In discussing the nomination made by the Progressive party committee, the Supreme Court of Missouri said:

> "* * * In our judgment relators were entitled to a place on the official ballots by reason of this act of the party committee. There may be more obstacles in the way of reaching this conclusion, but in my way of thinking the conclusion is well grounded in legal principles. We have here a political party, nation-wide, organized after the time for taking the preliminary steps for the August primary had expired. Such party, therefore, could not participate in the primary, although it came into existence prior to the primary. The preliminary steps had to be taken prior to June 6, 1912, at which time there was no such political organization, but it did have a national and state organization prior to August 6, the date of the primary. Such party although actually in existence had no candidates for office running at such primary. In the Act of 1909 (Sec. 16, Laws 1909, p. 485), it is provided; 'Vacancies occurring after the holding of any primary

> or where no person shall offer himself as a candidate before 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.'
>
> "This section is broad enough to permit the party committee of such party to fill any and all vacancies upon their party ticket. * * *"

The difference between the Kortjohn case, supra, and your situation is that, in the Kortjohn case, there were no candidates filed prior to the primary election by a new party, and in your letter, there was no office in existence for which nominations could be filed. However, the office is now, prior to the primary election, in existence. Senate Bill No. 483, a bill for the creation of the office of clerks of the county courts, was approved by the Governor on July 12, 1946, with an emergency clause.

CONCLUSION

It is, therefore, the opinion of this department that the county committees of the political parties may fill in a candidate for the office of county clerk, since, at the last date for filing a candidate's nomination, that office was nonexistent and subsequently has come into being prior to the primary election of August 6, 1946.

Respectfully submitted,

J. MARTIN ANDERSON
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

JMA:LR