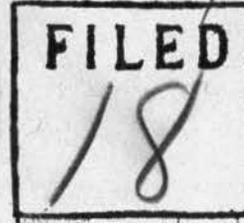


ELECTIONS: Declaration of candidate which does not state office for which filing is made is insufficient and does not authorize printing of candidate's name on ballot.

May 25, 1950

Honorable Joe Collins
Prosecuting Attorney
Cedar County
Stockton, Missouri



Dear Sir:

This is in answer to your letter of recent date requesting an official opinion of this department and reading as follows:

"Enclosed is a copy of a declaration filed by a candidate in Cedar County, Missouri.

"The facts given to me are that B. A. Cheek, who is the Chairman of the Cedar County Democrat Central Committee came in the County Clerk's office to file as a candidate for re-election.

"He said in the presence of the County Clerk and his deputy, 'Here, I want to file for re-election for democrat committeeman of Madison Township.' He had signed the form and ask the County Clerk to fill it out for him.

"The County Clerk filled out the declaration, but neglected to put in the Township or what office the candidate was seeking re-election.

"And further as to the candidates intentions to run for re-election for committeeman he did not produce a treasurer's receipt signed by the Treasurer of the committee as would be required if he were a candidate for any other office at the time.

"J. W. Farmer who is running for committeeman of Benton County is orally protesting the declaration and the right of the candidate to have his name printed upon the official ballot at the primary election

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and that he has not legally filed and that it is now too late to file.

"The county clerk has been ask not to turn in the name of the candidate so his name can be printed upon the official ballot.

"Please give me your opinion on whether or not the candidate is legally filed for the office of democrat committeeman of Madison Township and should the county clerk turn in his name to be printed on the official ballot."

The declaration, a copy of which you have enclosed, provides as follows:

"DECLARATION OF CANDIDATE

Filed
February 4, 1950
Cecil H. Graves
County Clerk
Cedar County

"To County Clerk of Cedar Co.

Stockton, Mo.

"I, the undersigned, being a qualified elector of the Democrat Party, a resident of Cedar County, Missouri, and over the age of 21 years, do hereby declare myself a candidate upon the Democrat ticket for the office of

to be voted for at the General Primary Election to be held on the First Tuesday of August, 1950; and I further declare that if nominated at said primary and elected, I will accept and qualify as such officer.

B. A. Cheek
(Sign name in full)"

Section 11550, Laws of Missouri, 1944, Extra Session, page 24, provides in part as follows:

"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

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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: * * "

(Underscoring ours.)

We believe that the written declaration of the candidate for any office must state the office for which the person declaring is a candidate, and it is insufficient merely to make an oral statement to such effect. In the case of Rousseau v. Democratic Parish Executive Committee for Parish of St. Martin, 164 So. 175, the Court of Appeal of Louisiana, First Circuit, had before it a case in which certain persons had filed for ward offices in the parish and had not indicated which ward office was being sought. The court said, l.c. 181:

"The candidacy of Homer Champagne and his coplaintiffs, thirteen in number, were rejected by the committee and the committee rejection was upheld by the lower court on the ground that their notification does not state any office for which they are a candidate nor the ward of which they are an elector. The judge a quo refers to the law under which the parishes are subdivided into wards and these wards, under police jury ordinances, into precincts for the purpose of voting. The lower court took cognizance of the fact that the parish of St. Martin is divided into six police jury wards, from which one police juror, one member of the school board, one justice of the peace, and one constable from each ward is elected in that parish. The action of the committee was upheld in the lower court on the ground on which he acted in holding that a notification as such, in order to satisfy the law, must state the ward and the precinct from which the particular police juror, school board member, justice of the peace, and constable offers as a candidate. And if it does not, there is, in effect, no notification or candidacy which the Democratic parish executive committee could recognize."

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The court further said, l.c. 182:

"The above language shows unmistakably that the lower court, acting on the face of the notification, upheld the action of the committee on the sole ground that the contestants did not state in their respective notifications the particular ward in the parish in which they sought to offer themselves as a candidate. That the office mentioned in the notification, to wit, 'police jury of St. Martin Parish,' 'parish school board member of St. Martin Parish,' 'justice of the peace of St. Martin Parish,' 'constable of St. Martin Parish,' was no office; that the notification was therefore not such as the committee or the courts could recognize under the Primary Election Law. The opinion does not deny that if the accompanying declaration under oath may be taken into account, the notification is sufficient, but contends that this cannot be done. We differ with the lower court on this subject. We think the accompanying declaration can and should be taken into account in acting on the sufficiency of the notification. The declarations under oath not only state the ward of the parish in which the candidate is an elector, but all except those of Elus Daigle, Lionel Broussard, Luke Courville, Henry F. Roberthon, and Ulinore Guidry state in addition the precinct at which they vote. This declaration under oath is, by the law, made a necessary part of the notification. Without this declaration there is no notification. As notification without this accompanying declaration would be no notification, we believe that when the ward of which the elector is a voter is set forth and contained in the declaration under oath, this declaration under oath must be taken into account in acting on the notification, because under the law, one is an essential accompaniment of the other. The declaration informed the committee of all that they were required to know under the statute in order to certify the candidacy of the party and properly allocate him as a candidate for office from that particular ward. * * * "

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(Application for writs of certiorari, prohibition and mandamus was denied by the Supreme Court of Louisiana, 165 So. 166.)

The holding in this case is that the office for which candidacy is being declared must appear in the papers filed in declaring such candidacy. We believe the rule laid down in the Rousseau case to be applicable here, and since no written declaration for any office has been filed by Mr. Cheek, his name should not appear on the ballot as a candidate for Democratic Committeeman of Madison Township.

CONCLUSION

It is the opinion of this department that where a declaration of candidacy is filed but the office is left blank that such declaration is ineffective and the name of the person filing such declaration should not be printed on the ballot for committeeman.

Respectfully submitted,

C. B. BURNS, JR.
Assistant Attorney General

APPROVED:



J. E. TAYLOR
Attorney General

CBB:VLM:LRT