

ELECTIONS:
VACANCY AFTER NOMINATION:

When a vacancy in office occurs after any primary and before the general election, such vacancy shall be filled by nomination by the party committee of the proper county, district or state, according to the office to be filled, and such nomination shall be certified to by the chairman or secretary of the party committee.

October 10, 1950



Honorable Harold L. Miller
Prosecuting Attorney
DeKalb County
Maysville, Missouri

Dear Sir:

You have requested an official opinion by this department upon the following statement of facts:

"With reference to your September 22nd, letter, I felt that after I had sent my letter out that I had not sufficiently explained the situation.

"A was nominated for office, and on August 30th, withdrew as a Candidate for the office, (being a county office); on September 20, a declaration of candidacy was filed on behalf of B, signed B by C. C is the Secretary of the County Central Committee, however, the declaration did not disclose such fact. It is not known whether or not the vacancy was filled by any action of the Central Committee or not, since no certificate or certification to such effect was filed with the County Clerk."

The Laws of 1941, page 354, Section 11539, which will be Section 120.75, R. S. Mo. 1949, provides as follows:

"The central committee of a political party shall consist of the largest body elected for the purpose of representing and acting for the party in the interim between conventions of the party. That for the purpose of making nominations to fill vacancies resulting from death or resignation and not otherwise, on a ticket previously nominated a majority of all the members-elect of a central committee shall be necessary to take action. That a central committee shall not have the power to delegate

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its authority to make nominations to any person or number of persons, and that any act consequent upon any such delegation of authority shall be held to be null and void. That no central committee shall have the power to substitute, to fill any vacancy, the name of any person who is not known to be of the same political belief and party as the person for whom he is substituted."

Section 11539, Laws No. 1941, page 365, was repealed by the 65th General Assembly by the enactment of House Revision Bill 2057. Said House Revision Bill 2057 provides the following sections that relate to the problem presented by you.

Section 120.08

"All certificates of nomination which are in apparent conformity with the provisions of sections 11539 and 11540, shall be deemed to be valid unless objection thereto shall be duly made in writing within three days after the filing of the certificate. In case such objection is made, notice thereof shall forthwith be mailed to all candidates who may be affected thereby, addressed to them at their respective places of residence as given in the certificate of nomination. Objections to use of a party name may also be made and passed upon in the same manner as objections to certificates. The secretary of state or the county clerk, as the case may be, with whom the original certificate was filed, shall in the first instance pass upon the validity of such objection. His decision shall be final unless an order shall be made in the matter by the supreme court, or a circuit court, or by a judge of such court in vacation, before the date for the certification of the names of nominees by the secretary of state to the county clerk, or before the time at which the county clerk is required by law to publish the names of nominees as certified to him. Such order may be made summarily upon application of any party interested and upon such notice as the court or judge may require. The decision of the secretary of state, county clerk or the order of the court or judge thereof in vacation shall be binding on all county and municipal officers with whom certificates of nomination are filed. In all cities having a board of election

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commissioners, the board shall perform all the duties herein required of county clerks and be governed in all respects by the provisions of sections 11539 and 11540, the same as county clerks are governed by such provisions."

Section 120.13

"No person shall (1) falsely make or fraudulently destroy any certificate of nomination or any part thereof; (2) file any certificate of nomination, knowing the same or any part thereof to be falsely made or (3) suppress any certificate of nomination, or any part thereof, which has been duly filed. Every person violating any of the provisions of this section shall be deemed guilty of a felony and upon conviction shall be punished by imprisonment in the Penitentiary for a period of not to exceed two years, or by imprisonment in the County Jail for a period not to exceed one year."

Section 120.55

"When a vacancy, occurring in the nominations after the holding of any primary, has resulted from the death or resignation of a nominee of the party who was selected at such primary or when a vacancy in office occurs after the last Tuesday in April and before the general election held in the same year which vacancy is to be filled for the unexpired term at such general election, the party committee of the county, district or state, as the case may be, shall have authority to make nominations to fill such vacancies. Nominations to fill such vacancies shall be filed, as the case may be, either with the secretary of state not later than fifteen days before the day fixed by law for the election of the persons in nomination or with the board of election commissioners or county clerk not later than ten days before such election. No names shall be allowed on any ticket until the required fee has been paid."

The election laws of Missouri do not prescribe the form in which the certificate of nomination shall be made by the party committee. Therefore the form of the certificate of nomination may be worded in any manner to inform the person with whom it is filed of the facts required by law to be given by the party committee.

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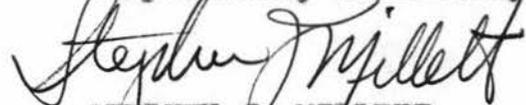
The certificate should state that a majority of all the members elect of the central committee met to fill the vacancy on the party ticket and that John Doe was nominated by the central committee to fill the vacancy resulting from the death or resignation of the nominee of the party who was selected at the primary election. This statement or certificate should be signed by the Chairman of of the party central committee or its secretary, or by both the chairman and secretary.

The facts stated in your request show that a declaration of candidacy or the form used for a declaration of candidacy was filed on behalf of B and signed B by C. The fact that C is the secretary of the county central committee would not make the declaration of candidacy serve the purpose of nominating B to fill the vacancy created by the withdrawal of A as a candidate for a county office. C should make a statement that the party central committee met with a majority of members in attendance and that at said meeting the committee nominated B to fill the vacancy on the party ticket created by the resignation or withdrawal of A as a candidate, if such facts have occurred. If the party central committee has not held a meeting to fill the vacancy, then it will be necessary for it to do so.

CONCLUSION

It is the conclusion of this department that the declaration of candidacy filed on behalf of B by another person does not fill the vacancy on the party ticket created by the resignation of A who was nominated at the last primary election. In order to fill the vacancy the county central committee must meet and nominate a person to fill the vacancy on the party ticket for a county office. The action of the central committee must be certified to by the chairman or secretary or both on behalf of the party central committee and filed with the county clerk.

Respectfully submitted,



STEPHEN J. MILLETT
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

SJM:mw