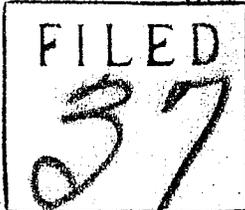


ELECTIONS: One who filed declaration of candidacy for nomination of state representative within time and manner prescribed by Section 120.340 RSMo 1949, but at time failed to present receipt or other evidence that fee required by Section 120.350 RSMo 1949 was previously paid to treasurer of county central committee of party upon whose ticket candidate is running, but on same day, subsequent to filing of declaration, fee is paid and no receipt obtained therefor, candidate has substantially complied with Sections 120.340 and 120.350 RSMo 1949, and his name must be printed upon official ballot.



June 4, 1954

Honorable G. D. Hamilton
State Representative
Ralls County
New London, Missouri

Dear Sir:

This department is in receipt of your recent request for an official opinion, as shown by said request and attached correspondence. The inquiry reads in part as follows:

"A man filed for an office here in the county, instead of paying the money to the treasurer and getting a receipt, turning it over to the County Clerk for filing, he went to the County Clerk, personally signed the treasurer's name by him, then took the money to the treasurer. Is this within the scope of the law?"

Neither the inquiry ^{nor} a statement of facts of the original letter were clear to us, and we requested that you explain both more fully. From such explanation we understand the facts involved to be substantially as follows:

Upon April 27, 1954, Chester Davis, apparently a citizen of Ralls County, Missouri, filed a declaration of his candidacy for the Democratic nomination of state representative, to be voted upon in the primary election to be held in Ralls County in August, 1954. The declaration was filed with the county clerk of said county, and accompanying the declaration was what purported to be a receipt, showing that the sum of \$5.00 had been paid by Davis to the treasurer of the Democratic Central Committee of such county. The receipt has been described as an ordinary receipt,

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except that it was written by Davis, who signed the treasurer's name thereto and underneath which was placed the words "by Chester Davis." The purported receipt appeared to evidence the fact that Davis had paid the \$5.00 filing fee required by law to the treasurer of the political party upon whose ticket he proposed to run in the coming primary election. No date is given, but from the facts we assume that the receipt bore the same date as the declaration, namely, April 27, 1954.

The statement of facts goes into further details and discloses that the receipt was unauthorized and certainly not what it purported to be. Said facts show that on the same day, after he had filed his declaration, Davis went to Center, Missouri, where he contacted the treasurer of the county central committee and paid to her the \$5.00 filing fee required by statute. This was the first notice the treasurer had received of Davis' candidacy and it is obvious that Davis made no attempt to contact her or to pay the filing fee previous to filing his declaration. Upon receiving such fee, the treasurer did not issue her official receipt to Davis evidencing such payment, nor has she ever issued her receipt to him for same. It is stated that she has not at any time authorized Davis to issue the receipt here in question or to sign her name, by him to said receipt.

No reason is given why Davis made no effort to pay the fee to the treasurer previous to filing his declaration, and since the statement of facts fails to indicate that subsequent to the writing of the receipt the treasurer ratified the writing of same, we must assume that no ratification was ever made; that Davis was unauthorized to write same, and that such receipt was void and of no effect.

In view of the explanation given, we understand that the question intended to be presented in the original opinion request is: Whether or not Chester Davis is entitled to have his name printed upon the official ballot as a candidate for the Democratic nomination of state representative, and to have same submitted to the voters in the primary election to be held in Ralls County, Missouri, in August, 1954.

In other words, has Davis sufficiently complied with the applicable Missouri statutes pertaining to the filing of declarations of candidacy for nomination to public office, and payment of a filing fee required by said statutes, at the time he filed his declaration and purported receipt with the county clerk, so that

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his name could be printed upon the official ballot, and more particularly, has he sufficiently complied with Sections 120.340 RSMo 1949 and 120.350 RSMo 1949? Section 120.340 RSMo 1949 reads 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 such primary filed a written declaration, as provided in sections 120.300 to 120.650, 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:

I, the undersigned, a resident and qualified elector of the (. . . precinct of the town of . . .), or (the . . . precinct of the . . . ward of the city of . . .), or the . . . precinct of . . . township of the county of . . . and state of Missouri, do announce myself a candidate for the office of . . . on the . . . ticket, to be voted for at the primary election to be held on the first Tuesday in August, . . ., and I further declare that if nominated and elected to such office I will qualify."

Section 120.350 RSMo 1949 reads as follows:

"(1) Each candidate, except a candidate for a township office, previous to filing declaration papers, as in sections 120.300 to 120.650 prescribed, shall pay to the treasurer of the

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state or county central committee of the political party upon whose ticket he seeks nomination a certain sum of money, as follows:

* * * * *

"(2) To the treasurer of the county central committee: Five dollars if he is a candidate for state representative or any county office.

"2. The candidate shall take a receipt therefor and file such receipt with his declaration papers. The sums of money so paid by the several candidates shall be evidence of their good faith in filing their declaration papers and shall be used as an expense fund by the several political parties upon whose tickets the various candidates seek nomination." (Underscoring supplied.)

We understand the chief objection of the opinion request is that the receipt for Davis' filing fee is insufficient, and that he has failed to comply with the law in paying his filing fee and in obtaining a proper receipt for such payment, previous to filing the declaration.

As to whether or not Davis has specifically complied with the statutory requirements will, of course, depend upon the construction to be given said sections.

The only function of a receipt of this nature is to present evidence to the county clerk that the prospective candidate has paid the necessary filing fee to the appropriate committee treasurer, previous to filing his declaration, so that the receipt can be filed with, but not necessarily at the same time, as the declaration. If the prerequisites mentioned by the above quoted sections have been complied with, then it becomes the county clerk's duty to file said declaration papers, and such candidate's name must be printed upon the ballot, and, conversely, if the candidate fails to comply with said statutory requirements he is not entitled to have his name printed upon the ballot.

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In the event Davis had previously paid the filing fee and had never received a receipt from the treasurer this would have been a sufficient compliance with Sections 120.340 and 120.350, supra. Such was declared to be the law by the Supreme Court in the case of State ex rel. Haller v. Arnold, 277 Mo. 474. At l.c. 480 the court said:

"* * * That question is: Does Section 6015 of the act supra, above quoted, absolutely require as a condition precedent to the placing by the Board of Election Commissioners of the name of a proposed non-partisan candidate on the official ballot, that the receipt of the City Treasurer for the deposit of the sum of sixty dollars shall be filed along with, and contemporaneously with the certificate of nomination of such proposed candidate?

"We have concluded that is does not. The affirmative of the question stated and presented by the facts here at issue would in our opinion and in the light of the language of the above section be too narrow a view to take of the meaning of that section. Such a view would inevitably restrict and circumscribe the right of a citizen to be a candidate for office within such limits and hedge the privilege about with such conditions as materially to impinge upon the guarantee of the Constitution that 'all elections shall be free and open' (Section 9, Article 2, Constitution 1875.) It will be noted that the statute uses the word 'with' only, without qualifying this word by the word 'contemporaneously' or other similar word connoting, or importing, simultaneity of filing of both the receipt for the deposit and the certificate of nomination. Clearly, the language used imports and requires the filing of this receipt at the same place and with the same officer with whom such certificate of nomination is filed. * * *

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"It is manifest that any eligible candidate for office is entitled to the whole of the last day allowed by law within which to submit himself to the electors for their suffrages. In a case like this, where the proposed candidate is in no wise at fault (the argument that he should have made up his mind earlier obviously having no weight, by reason of the truth of the premise last above) ought he to be deprived of the privilege of running for a public office by the mere adventitious fact of the absence from his office, or from the city, or from the state, of the only officer from whom the required official receipt can under the letter of the law be obtained? The Treasurer might be ill, or a case can be imagined where the death of the Treasurer might occur on the last day for filing prescribed by the letter of the statute, and wherein it would be impossible to appoint his successor in time to have such successor accept the required deposit and issue the required receipt therefor. * * * 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.
* * *

It has long been a cardinal rule of statutory construction, as declared by the appellate courts of this state, that the statute under consideration must be given that construction which would give effect to the intent of the legislators and that such intent if possible shall be ascertained from the words expressed. The words of such a statute shall be given their common or ordinary meaning unless from the context it appears that some other or different meaning was intended.

Another important statutory rule of construction is that the legislators are presumed to have passed a reasonable and constitutional statute rather than an unreasonable and unconstitutional one.

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These rules are so firmly established that we believe it would serve no useful purpose to cite any Missouri court decisions supporting them.

Keeping these rules of statutory construction in mind, we turn our attention to the construction of Sections 120.340 and 120.350 supra. It must be remembered that said sections are a part of the election laws, and that such laws are to be construed liberally in order to effectuate the purposes for which they were enacted, namely, that the right of suffrage, and to run for public office shall not be unduly or unreasonably restricted. To construe said laws in any other manner would be in violation of those constitutional provisions which declare that all elections shall be free and open. In the case of Haller v. Arnold supra, among other matters passed upon, the court upheld above mentioned principle as the law and at l.c. 480 said:

"* * * Such a view would inevitably restrict and circumscribe the right of a citizen to be a candidate for office within such limits and hedge the privilege about with such conditions as materially to impinge upon the guarantee of the Constitution that 'all elections shall be free and open' (Section 9, Article 2, Constitution 1875.)* * *"

(Said constitutional provision is now Section 25, Article I, Constitution of 1945.)

If a strict construction of the above mentioned sections is to be given then it would unquestionably be the mandatory duty of a candidate to file a declaration within the time required and to present a receipt to the county clerk (though not necessarily at the same date of filing the declaration) evidencing the payment of the fee mentioned in Section 120.350 supra. Failing in this particular, such candidate would not be entitled to have his name printed upon the official ballot.

On the other hand, if a liberal, rather than a strict, narrow, or technical construction of these statutes is to be adopted, said statutes should be construed as requiring a candidate for nomination to public office to file his declaration with the county clerk of the candidate's county within the period specified and to present a receipt or some other evidence showing the prior payment of the fee to the appropriate treasurer of the political central committee, that is, the fee must be previously paid to the treasurer if this is

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possible. In the event the candidate pays the fee before the date for filing declarations has expired and is entitled to the treasurer's receipt for such payment, but never receives one, he has sufficiently complied with the statutes and is entitled to have his name printed upon the ballot.

It is our further thought that a liberal construction of such statutes would permit the candidate to file a receipt showing payment of the fee written after the filing of the declaration but before the statutory period for filing of the declaration had expired. In the event the fee had been paid either before or after the declaration, but before the expiration date for filing declarations, and no receipt was ever issued, then we believe this is a sufficient compliance with the statute.

It is our further belief that only a liberal construction of these statutes can be adopted if the legislative intent is to be followed, hence, we shall construe them liberally in accordance with the ideas which we have mentioned above. To sustain our position in this respect, we again turn to that part of the opinion in *Haller v. Arnold* shown in the last paragraph of same quoted on page 6 above and we believe this is a sufficient reason for our holding to a liberal construction of the statutes here in question.

From the facts given above, it appears to be true that when Davis filed his declaration, he did not present a true receipt showing previous payment of the fee to the county committee treasurer since he had not previously made the required payment. However, he did pay such fee upon April 27, 1954, which was the last day he could legally do so, and he had the right to pay it at any time during said day. The payment of the fee, and not the obtaining of the receipt showing such payment is the essential requirement of the statute. Davis was entitled to his receipt whether or not he ever received one, and these facts could, and may have been known to the county clerk. The payment of the fee after the declaration was filed but before the expiration of the filing date was only an irregularity in the performance of the statutory requirements, and in view of the fact that Davis has performed all of such requirements, under a liberal construction of the statutes, his name must be printed upon the official ballot as a candidate for the Democratic nomination for state representative at the primary election to be held in Ralls County in August, 1954.

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CONCLUSION

It is the opinion of this department that one who filed a declaration of his candidacy for the nomination of state representative within the time and manner prescribed by Section 120.340 RSMo 1949, and at such time did not present a receipt or other evidence showing that the fee required by Section 120.350 RSMo 1949 had been previously paid to the treasurer of the county central committee of the political party, upon whose ticket said candidate is running, but that upon the same date and subsequent to the filing of the declaration the fee was paid and no receipt obtained therefor; that said candidate has substantially complied with the provisions of Sections 120.340 and 120.350 RSMo 1949, and his name must be printed upon the official ballot and submitted to the voters at the primary election in which he seeks nomination.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Paul N. Chitwood.

Yours very truly,

JOHN M. DALTON
Attorney General

PNC:sm