

CANDIDATES:  
ELECTIONS:

In a case where persons seeking nomination for a public office do not have similar names, it would be improper for one of these candidates to have the prefix "Attorney" or "Atty." before his name on the ballot.



July 19, 1954

Honorable Elvis A. Mooney  
Prosecuting Attorney  
Stoddard County  
Bloomfield, Missouri

Dear Sir:

Your recent request for an official opinion reads as follows:

"Three candidates are seeking the nomination for Judge of the Magistrate Court in the Democratic Primary; two candidates are not lawyers, but they are former Justices of the Peace; one candidate is a duly licensed attorney-at-law.

"The candidate, who is a Lawyer, requests the County Clerk and the County Court to place his name on the official ballot as follows: Atty. John Doe. Apparently this is requested to establish himself as a Lawyer as distinguished from the other two candidates who are non-Lawyers. One of the other candidates protested and insists that the abbreviation thereof signifying Lawyer or Attorney-at-Law is improper on the official ballot.

"The members of the County Court and the County Clerk have requested this office to request your opinion in regard to their duty in the above mentioned controversy: That is, whether or not the County Court and the County Clerk are authorized, in law, to place any word or abbreviation thereof signifying Attorney-at-Law (especially the abbreviation Atty.) before the name of any candidate, for Judge of the Magistrate Court, on the official ballot, in

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the Democratic Primary Election this August 3rd.

"Your opinion in this matter will resolve a difficult situation; and the same is needed before the 19th day of this month; that date being the last date the County Court is in session before the official ballots are ordered printed."

We first note that we are unable to find anything in Missouri statutory or case law which would, either directly or by implication, sanction the placing of the word "Attorney" or its abbreviation before the name of a primary candidate on the primary ballot.

In regard to what shall appear on a primary ballot, Section 120,340, RSMo 1949, states:

"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.

\_\_\_\_\_."

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In regard to ballots in the election, Section 111.420 RSMo 1949 states in paragraph 1:

"Every ballot printed under the provisions of this chapter 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 chapter 120, and no other names. The names of all candidates to be voted for in each election district or precinct shall be printed on one ballot; all nominations of any political party or group of petitioners being placed under the party name designated by them in their certificates of nomination or petitions, and the ballot shall contain no other names, except that in place of the names of candidates for electors of president and vice-president of any political party or group of petitioners, there shall be printed within a bracket, immediately below the circle in the column of said party, with a square to the left of such bracket, the names of the candidates of each political party for president and vice-president. The names of the candidates of the several political parties for electors of president and vice-president shall not be printed on the ballot, but shall after nomination, be filed with the secretary of state." (Emphasis ours.)

Paragraph 5 of the same section states, in part:

"As nearly as practicable the ballot shall be in the following form:

" OFFICIAL BALLOT		DATE
DEMOCRATIC	REPUBLICAN	SOCIALIST
○	○	○
For President	For President	For President
and	and	and
Vice-President	Vice-President	Vice-President
( ) _____	( ) _____	( ) _____

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( ) For Governor ( ) For Governor ( ) For Governor

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( ) For Lieutenant Governor ( ) For Lieutenant Governor ( ) For Lieutenant Governor

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( ) For Secretary of State ( ) For Secretary of State ( ) For Secretary of State

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As we stated before, nothing in the above would appear to contemplate that anything other than the name of the candidate can appear on either the primary ballot or the election ballot.

We believe that the law on this matter is correctly stated in the following portion of Section 161, p. 238, Vol. 29, C.J.S.:

"It is unlawful to place any characterization or description either before or after the name of a candidate, unless there is such identity of names as would justify such description in order to permit the voter to make an intelligent expression of his choice. Thus, the purpose of a statute requiring the adding to the name of a candidate whose surname is the same as another candidate a prescribed number of words indicating the occupation and residence is to avoid confusion that may arise from the appearance on the ballot of identical surnames, but the statute does not apply where the surnames are not identical but merely of similar sound. However, where a statute provides for the printing of the occupation of a candidate or candidates having the same or similar surnames, the use of the word 'similar' in connection with 'same' indicates a legislative intent that the statute be applied where the names are alike but not identical."

It does not appear that there is any similarity of the names of the candidates for the nomination for magistrate. Accordingly, we believe that it would not be proper to carry

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the prefix "Atty." before the name of a candidate on the ballot.

CONCLUSION

It is the opinion of this department that, in a case where persons seeking nomination for public office do not have similar names, it would be improper for one of these candidates to have the prefix "Attorney" or "Atty." before his name on the ballot.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Hugh P. Williamson.

Very truly yours,

JOHN M. DALTON  
Attorney General

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