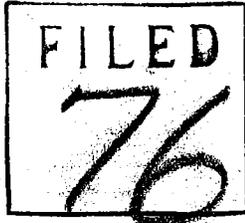


ELECTIONS: Withdrawal of candidate who has filed declaration
of candidacy need not be acknowledged to be
BALLOTS: effective. Valid withdrawal cannot subsequently
be withdrawn. Such person's name should not
COUNTY CLERKS: appear on ballot.



July 28, 1954

Honorable Lawson Romjue
Prosecuting Attorney
Macon County
Macon, Missouri

Dear Mr. Romjue:

This is in response to your request for opinion dated
July 22, 1954, which reads, in part, as follows:

"The County Clerk of Macon County has directed me to request your opinion as to the action, under the law of our State, which he should take in the following factual situation.

"Prior to the closing date for filing for offices in April an individual (who for the sake of clarity I will hereafter refer to as candidate) filed himself for precinct committeeman. On July 12 a written statement or declaration in appropriate language to indicate the intention of the candidate to withdraw his name from the ballot as a candidate for precinct committeeman was delivered to the County Clerk by a third person. On July 20 the County Clerk received a letter from the candidate through the mail dated July 19 and requesting that his name be placed on the ballot for precinct committeeman. Both of these documents were signed but neither of them was acknowledged or sworn to. Another man has also filed in proper time for committeeman in that precinct.

Honorable Lawson Romjue

"Question: Should the County Clerk order the ballots for the particular precinct to be printed so as to include the name of the person I have referred to as candidate on the ballot?"

On June 10, 1948, this office rendered an opinion to Honorable James Glenn, Prosecuting Attorney of Macon County, a copy of which we enclose, which opinion held that "Where a person has duly filed for public office and within the proper time files a withdrawal of that candidacy, said person cannot subsequently file a withdrawal of the withdrawal."

We believe the conclusion of the above opinion is sound law, which leaves for our determination the sole question of the validity or effectiveness of the instant candidate's withdrawal. If his withdrawal was effective, his name should not appear on the ballot, but if ineffective, he has not in fact withdrawn, and both his attempted withdrawal and revocation of his withdrawal should be ignored.

In determining the validity of his withdrawal, the basic question is whether it was necessary that the withdrawal be acknowledged. If Section 120.230, MoRS, Cum. Supp. 1953, passed by the General Assembly in 1953 as part of Senate Bill No. 117, is applicable to those who file declarations of candidacy for the primary election, acknowledgment is necessary; otherwise it is not required.

On June 18, 1954, this office rendered an opinion to Honorable Robert A. Dempster, Prosecuting Attorney of Scott County, in which Section 120.230, supra, was applied generally to all candidates for election in determining the time within which candidates might withdraw their candidacy. Since that date the Supreme Court of Missouri decided the case of State ex rel. Preisler v. Toberman, No. 44,409, April 1954 Session, handed down on July 12, 1954, and because of the holding and reasoning of that case we hereby withdraw the Dempster opinion above mentioned.

The Preisler case held that Senate Bill No. 117, 67th General Assembly, Sections 120.140 - 120.230, MoRS, Cum. Supp. 1953, by implication repealed and replaced the certificate of nomination method provided by Sections 120.010 and 120.080, RSMo 1949, but that "the 1953 Act does not refer to the State

Honorable Lawson Romjue

primary election in any way except to state the conditions under which a new political party shall be entitled to take part in." In other words, except as above limited, the court held that Senate Bill No. 117 had reference only to nominating petitions.

In discussing the various sections of this act the court said: "Section 120.230 provides a method and time for withdrawal by a candidate nominated by petition."

We believe, and so rule, that Section 120.230 applies only to those candidates who have been nominated by the petition method, and not to those who have become candidates by filing a declaration of candidacy for the primary election.

There is no other statute specifying the time or the method of withdrawal for a candidate who has filed a declaration of candidacy, therefore the Legislature has not required that such a withdrawal be acknowledged. It is significant to note also that the Legislature has not required that the declaration of candidacy itself be acknowledged, and we cannot presume that any greater formality is required in withdrawing such candidacy. In the absence of such requirement, we hold that the written statement received by the county clerk on July 12, signed by the candidate and in language sufficient to indicate the candidate's intention to withdraw his name from the ballot, was an effective and valid withdrawal which could not subsequently be revoked. Therefore, the county clerk should order the ballots printed excluding this person's name therefrom.

CONCLUSION

It is the opinion of this office that a person who has duly filed a declaration of candidacy and later and in due time submits to the county clerk a written, signed statement indicating his intention to withdraw his name from the ballot as a candidate, has effectively withdrawn as a candidate. Such withdrawal need not be acknowledged and any subsequent attempt to withdraw his withdrawal is ineffective. Under the above circumstances, the county clerk should order the ballots printed excluding this person's name therefrom.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, John W. English.

Yours very truly,

JOHN M. DALTON
Attorney General

JWI:ml
Enc: Opn. James Glenn,
6-10-48.