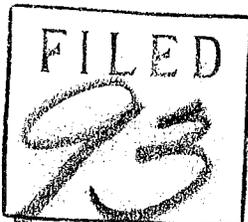


ELECTIONS: Tie vote for candidates for nomination to be
NOMINATIONS: determined by lot by canvassers of returns of
election.



December 15, 1954

Hon. Wayne W. Waldo
Prosecuting Attorney
Pulaski County
Waynesville, Missouri

Dear Sir:

Reference is made to your request for an official opinion of this department reading as follows:

"The opinion of the Attorney General is respectfully requested on the following situation:

"Mr. Guy Reed and Mr. Chris C. Cole were candidates for the nomination on the democratic ticket for the office of Presiding Judge of Pulaski County, Missouri. After all ballots were counted in the democratic primary on August 3, 1954, Mr. Reed and Mr. Cole each received an equal number of votes. Mr. Reed and Mr. Cole were the only candidates for the democratic nomination. The tie vote was resolved by placing the name of Mr. Reed in one envelope, the name of Mr. Cole in another envelope, and placing both envelopes in a box, and having a child draw one envelope containing a name from the box. The name of Mr. Guy Reed was drawn from the box and he was declared the winner and was placed on the ballot in the General Election as the democratic nominee.

"Before the name of Mr. Reed was selected as above outlined, Mr. Cole objected to selecting the nominee in such a manner on the basis that it was gambling. Mr. Cole still objects on the same basis.

Hon. Wayne W. Waldo

"The opinion of the Attorney General is respectfully requested as to whether the above outlined procedure constitutes a valid nomination of Mr. Reed to the office of Presiding Judge of the County Court of Pulaski County, Missouri, in view of the fact that Mr. Cole objected to the selection on the grounds that it was gambling.

"The selection of Mr. Reeds name was made by lot, by the County Clerk and the canvassers of the election, as provided by Section 120-520 MRS, 1949."

Section 120.520 RSMo 1949 is found as a portion of the chapter relating to nominations by primary elections. It reads as follows:

"In case of a tie vote, the tie shall forthwith be determined by lot by the canvassers."

From the facts stated in your letter of inquiry, it appears that the selection of the nominee was made in accordance with the provisions of this statute.

CONCLUSION

In the premises, we are of the opinion that a tie vote for candidates for nomination at a primary election is to be determined by lot by the canvassers of the returns of such primary election.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Will F. Berry, Jr.

Yours very truly,

John M. Dalton
Attorney General

WFB/vtl