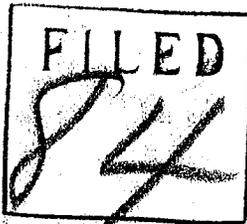


ELECTIONS: Declaration of candidacy for the office of
SCHOOLS: county superintendent of schools filed at
COUNTY SUPERINTENDENT 11:00 A.M., on February 19, 1955, is within
OF SCHOOLS: time prescribed by Sec. 167.020, RSMo 1949.



February 28, 1955

Honorable LeRoy Snodgrass
Prosecuting Attorney
Miller County
Tuscumbia, Missouri

Dear Sir:

This is in response to your request for opinion dated February 21, 1955, which reads as follows:

"I would like to have your opinion as to the latest date and hour a person may file for the office of County Superintendent of Schools.

"The election being on the 5th of April, has a person that files for the office at 11:00 A.M., February 19th, filed within the time prescribed by section 167.020, RSMo 1949? Further, if the person so filing has not filed within the prescribed time, is the proper procedure of the County Clerk to refuse to place the person's name upon the ballot?

"I would appreciate your early opinion upon this matter in that a party has so filed for the office of Superintendent on the date and at the time mentioned above."

Section 1.040, RSMo 1949, is the section that specifies the manner of computing the time within which an act is to be done. That section reads as follows:

"The time within which an act is to be done shall be computed by excluding the first day and including the last. If the last day be Sunday it shall be excluded."

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The case of Butler et al. v. Board of Education of Consolidated School Dist. No. 1 of Audrain County, Mo. Sup., 16 S.W. (2d) 44, was a case involving the time within which a notice of election should be given. The statute required fifteen days' notice. In that case the court said, l.c. 45:

"The notices were posted on March 8, 1928, and the election was held March 23, 1928. Excluding the first and including the last day gives 15 days' notice of the election. Stutz v. Cameron, 254 Mo. 340, loc. cit. 363, 162 S.W. 221. The contention is overruled."

A county superintendent is required to file his declaration of candidacy at least forty-five days before the annual school meeting by virtue of Section 167.020, RSMo 1949, which section reads, in part, as follows:

"At least forty-five days before the annual school meeting in any year when a county superintendent of public schools is to be elected, any person desiring to be a candidate for election to the office of county superintendent of public schools must file with the county clerk a written declaration of his candidacy for the office, which declaration shall be filed by the county clerk and no filing fee shall be charged. * * *"

The annual school meeting is held on the first Tuesday in April of each year (Sections 165.200 and 165.330, RSMo 1949). In 1955 that day falls on the 5th of April. This candidate filed his declaration on the 19th of February. Applying the rule established by Section 1.040 and the Butler case, supra, we find that February 19th was the last day for filing and, hence, that the candidate has filed within the time prescribed by Section 167.020, supra.

It has been well established that a candidate has the whole of the last day allowed by law within which to file his declaration of candidacy. In State ex rel. Huse v. Haden, 349 Mo. 982, 163 S.W. (2d) 946, 947, the court, in quoting from an earlier case, said:

"In so holding the court said: 'It is manifest that any eligible candidate for office is entitled to the whole of the

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last day allowed by law within which to
submit himself to the electors for their
suffrages. * * *"

Having answered your first question in the affirmative, i.e., that this candidate for the office of county superintendent of schools has filed his declaration of candidacy within the proper time, we deem it unnecessary to answer the second question you have submitted.

CONCLUSION

It is the opinion of this office that a declaration of candidacy for the office of county superintendent of schools filed at 11:00 A.M., on February 19, 1955, is within the time prescribed by Section 167.020, RSMo 1949.

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