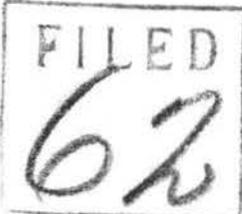


ELECTIONS:
WRITE-IN AT PRIMARY:
WHEN POLITICAL COUNTY
COMMITTEE CAN FILL
VACANCY:

file; that same section does not authorize committee to fill vacancy when no one files; and that same section does not require party committee to fill vacancy before primary.

Names of persons written in on primary ballot should not be placed on ballot at official election; that Section 120.550, Mo. Cum. Supp. 1955, authorizes party committee to fill vacancy when candidate dies or resigns before primary but after last day in which any other party may

September 18, 1956,



Honorable John W. Mitchell
Secretary
Jackson County Board of
Election Commissioners
Court House
Independence, Missouri

Dear Mr. Mitchell:

We hereby acknowledge receipt of your letter of recent date requesting an official opinion from this office involving Section 120.550, Mo. Cum. Supr., 1955. Your letter reads as follows:

"We request an opinion from your office on the following two questions.

"1. In the recent primary there were four votes cast for an elector for the office of prosecuting attorney. This particular office on the Republican ticket there was no candidate on the ballot as the candidate who originally filed had withdrawn before the primary. Shall we as Election Commissioners place on the printed ballot for the General Election the name of this individual who received four write in votes?

"2. This question partially involves the above question. An elector had filed for the office of Prosecuting attorney, but, before the Primary and after the time of filing for this office had passed, he withdrew. Can the political party County Committee fill the vacancy and certify to the Election Board or the County Clerk a candidate whose name then should appear on the ballot for the General Election? If the candidate withdrew before the close of the filing could the political County Committee fill the vacancy? Did the County Committee have to fill the vacancy before the Primary? The withdrawal was some sixty days before the Primary."

Honorable John W. Mitchell

Enclosed herein is the answer to your first question. It is a copy of an official opinion from this office written in 1946 to the Honorable David W. Hill, Prosecuting Attorney of Butler County. In short, the opinion holds that election officials should not place the name of a person on the ballot for the general election whose name was "written in" on the primary ballots, when such person had not filed any declaration of candidacy. The statute sections quoted in the opinion are still the law.

Your next three questions involve the interpretation of Section 120.550, Mo. Cum. Supp., 1955. This is new law enacted in 1953, and there are no Missouri cases interpreting it. The law reads as follows:

"1. The party committee of the county, district or state, as the case may be, shall have authority to make nominations in the following cases:

(1) When a vacancy in the candidates for nomination as a party candidate for election to any office shall occur by reason of death or resignation after the last day in which a person may file as a candidate for nomination;

(2) When any person nominated as the party candidate for any office shall die or resign before election;

(3) When a vacancy in office which is to be filled for the unexpired term at the following general election, shall occur after the last day in which a person may file as a candidate for nomination.

"2. Nominations to fill such vacancies shall be filed, as the case may be, either with the secretary of state not later than fifteen days before the day fixed by law for the election of the person in nomination or with the election authority not later than ten days before such election.

"3. No name shall be allowed on the ballot until the required fee has been paid."

The first part of this section covers the situation you have mentioned in your second question, where a candidate dies or resigns before the primary but after the last day in which a person may file as a candidate for nomination. Thus, there is a vacancy under the statute, and the party committee shall have authority

Honorable John W. Mitchell

to nominate a candidate. Since the candidate you mention for prosecuting attorney on the Republican ticket withdrew about sixty days before the primary, but after the date in which any other person could file for the office, there is a vacancy for the office of prosecuting attorney on the Republican ticket, and the Republican party committee of Jackson County has statutory authority to nominate a candidate.

You next ask, "If the candidate withdrew before the close of the filing could the political county committee fill the vacancy?" Enclosed herein is the answer to that question. It is a copy of an official opinion from this office written in 1942 to the Honorable Dwight H. Brown, the Secretary of State. In short, the opinion holds that the county committee has no authority to fill a vacancy where no person offers himself as a candidate before the primary. The statute mentioned in the opinion is now Section 120.550, supra. The statute has been amended and additions made, but the enclosed opinion is still the law on the question you ask.

Your final question is, "Did the county committee have to fill the vacancy before the primary?"

The answer is no, although the county committee may fill the vacancy before the primary. If there is a situation in which a vacancy exists under the new law mentioned, supra, and the party committee makes a nomination, their only duty is to file the name of the nominee, as the case may be, "either with the secretary of state not later than fifteen days before the day fixed by law for the election of the person in nomination or with the election authority not later than ten days before such election." The word "election" used here, means the general election in November.

The law also states that no name shall be allowed on the ballot (in November) until the required fee has been paid.

CONCLUSION

Therefore, it is the opinion of this office that the election officials should not place the names of persons on the ballot for the general election whose names were "written in" on the primary ballots, when such persons had not filed any declaration of candidacy; that Section 120.550, Mo. Cum. Supp., 1955, authorizes the party committee to make nominations when a vacancy exists in the candidates for nomination as a party candidate for election to any office where a candidate dies or resigns before the primary but after the last day in which a person may file as a candidate for nomination; that the same section does not authorize the party committee to nominate a candidate and fill a vacancy where no person offers himself as a candidate before the primary; and, that the same section does not require the party committee to fill the vacancy and make a nomination before the primary.

Honorable John W. Mitchell

The foregoing opinion, which I hereby approve, was prepared by my Assistant, George E. Schaaf.

Yours very truly,

John M. Dalton
Attorney General

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Enclosures - 2