

LEGISLATIVE DISTRICTS:
SENATORIAL REDISTRICTING:
REPRESENTATIVE REDISTRICTING:
DECLARATION OF CANDIDACY:
FILING FEE OF CANDIDATES:
VOTING MACHINES:
ELECTIONS:

A declaration of candidacy for nomination as senator or representative in Jackson County filed prior to the creation of the new senatorial and representative districts after the 1960 census is a nullity. The filing fee paid with such invalid declaration may be applied to a valid declaration of candidacy thereafter filed.

December 27, 1961



Honorable George H. Morgan
Representative, 8th District
Jackson County
12312 South 71 Highway
Grandview, Missouri

Dear Mr. Morgan:

This will answer your letter requesting an opinion on a number of questions relating to candidacies for the offices of senators and representatives from Jackson County. We will consider these questions in order.

Your first question is as follows:

"1. In view of Sections 120.320, 120.330 and 120.340 Revised Statutes of Missouri, 1959, may a candidate file a declaration prior to the time when the Secretary of State has designated the offices for which the candidates are elected? (Ergo, is Section 120.320 in effect the official act initiating the election and no offices are subject to filing prior to the date of this notification?)"

This office has rendered an opinion to Honorable Warren E. Hearnes, Secretary of State, under date of December 20, 1961, a copy of which is herewith enclosed, which answers this question. In that opinion we ruled that declarations of candidacy for an office may be filed at any time after the completion of the general election next preceding the August primary election at which nominations for such office are to be made, but not later than the last Tuesday in April.

Honorable George H. Morgan

Your second question is as follows:

"2. What is the status of a candidate who files for the Thirteenth District (the new district to be created in Jackson County) prior to its creation?

a. If, upon its creation, he lives within the district?

b. If, upon its creation, he does not live within the district?

c. If the filing is deemed to be a valid filing, is its priority for position on the ballot as of the date of filing, or as of the date of the creation of the district?

It is the opinion of this office that until an office has been created, no person may validly file a declaration of candidacy for nomination for such office. Therefore, until the new district has been created, a declaration of candidacy theretofore filed is a nullity and does not operate to give the candidate a priority of position on the voting machine ballot.

Your third question is as follows:

"3. What is the status of a candidate filing for a district within which he now lives, if after his filing the declaration the lines of the district are changed so that he no longer resides within the district?

a. Is his filing void?

b. Is he deemed to have filed for the district in which he subsequently resides?

c. If his filing is deemed to be a valid filing, is its priority for position on the ballot as of the date of filing, or as of the date of the creation of the district?"

It is the opinion of this office that all of the senatorial and legislative districts in Jackson County went out of existence after the 1960 decennial census with the result that until new districts have been created as provided by law no person may validly file a declaration of candidacy for nomination for senator or representative from any such district.

Honorable George H. Morgan

In *Preisler v. Doherty*, 365 Mo. 460, 284 S.W. 2d 427, 1.c. 436, our Supreme Court expressly ruled:

"Thus all senatorial districts must go out of existence after each decennial census."

The same principle is applicable to representative districts, in our opinion. After the Secretary of State certifies to the county court the number of representatives to be elected in a particular county, the county court thereof, pursuant to Section 3, Article III of the constitution, "shall divide the county into districts". And Section 22.050, RSMo, which implements the Constitution, provides in part:

"Within sixty days after being officially so informed [of the number of representatives to be elected in such county], the county court * * * shall divide [the county] into representative districts . . ."

The foregoing provisions can mean only that after each decennial census, new divisions of the county into districts must be made. The old districts go out of existence even if the new districts into which the county is divided have the same boundaries as the former ones. This office so ruled in an opinion to Paul C. Calcaterra, Chairman of the Board of Election Commissioners of the City of St. Louis, under date of August 29, 1951. In that opinion, this office held in part:

"The Board may, in redistricting after each census, use the same boundaries in the new districts that the present districts have, but such Board must create new districts after each decennial census."

Therefore, in the opinion of this office, any declaration of candidacy filed before the new districts have been created is a nullity, there being no office in existence for which the candidate may seek nomination.

Your fourth question is as follows:

"4. What is the status of a candidate filing for a district in the event that subsequent

Honorable George H. Morgan

to the filing of the declaration the number of the district is changed?"

This question is answered by the ruling above made.

Your fifth question is as follows:

"5. In the event that any of the earlier filings are deemed invalid, may the filing fee paid to the Treasurer of the State or County Committee be applied to a corrected filing of a declaration, or is it forfeited?"

It is the opinion of this office that the filing fee paid by the candidate whose declaration of candidacy is invalid by reason of having been filed prior to the creation of the district which he seeks to represent may be applied by him to a subsequent valid declaration filed after the district has been created. Section 120.350, RSMo 1959, requires the candidate, previous to filing declaration papers to pay the requisite fee. Although the statute contains further provisions that the receipt for such payment shall be filed "with" the declaration, the purpose of this provision is simply to afford evidence of payment. In the circumstances described in your letter, the officials with whom the new declarations are filed not only have actual knowledge of the fact of payment, but have the receipts therefor in their files. This constitutes a substantial compliance with the requirements of Section 120.350. Attention is also called to cases in which declarations of candidacy were held valid even though the receipt for the fee was not filed until afterwards. See for example State ex rel Dodd v. Dye, Mo. App., 163 S.W. 2d 1055; State ex rel Huse v. Haden, 349 Mo. 982, 163 S.W. 2d 946; State ex rel Haller v. Arnold, 277 Mo. 474, 210 S.W. 374 and State ex rel Neu v. Waechter, 332 Mo. 574, 58 S.W. 2d 971.

Your final question is as follows:

"6. In the event that the prior filings for a district thereafter created are deemed to be valid and/or simultaneously filed as of the time of the creation of the district, will it be an appropriate procedure to draw by lots for position on the voting machine ballot?"

This question need not be answered, in view of our ruling above that the declarations of candidacy for a district prior to its creation are invalid.

Honorable George H. Morgan

The rulings herein have no application to elections to fill vacancies caused by the resignation or death of incumbent members of the General Assembly who were elected prior to the 1960 census. Our ruling applies only to the election of senators and representatives for terms commencing subsequent to a redistricting resulting from the decennial census.

CONCLUSION

It is the opinion of this office that until the legislative and senatorial districts in Jackson County have been created in accordance with the constitutional and statutory provisions after the 1960 decennial census, no person may validly file a declaration of candidacy for nomination as senator or representative from any such district, and that until such district has in fact been created a declaration of candidacy theretofore filed for any such office is a nullity and does not operate to give the candidate a priority of position on the voting machine ballot. Filing fees paid in connection with such invalid declarations may be applied by the candidate in connection with a subsequent valid declaration of candidacy filed after the creation of the district.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Joseph Nessenfeld.

Yours very truly,

THOMAS F. EAGLETON
Attorney General

JN:ms