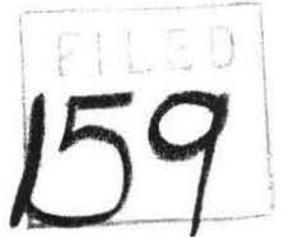


CANDIDATE:  
BALLOT:

The "full name" of a candidate appearing on an official ballot may when warranted include prefix "Mrs." and suffix "Sr." and "Jr." but may not use prefix "Dr." for a doctor included in Section 564.290 RSMo.

April 18, 1962

Opinion No. 159



Honorable Warren E. Hearnes  
Secretary of State  
Jefferson City  
Missouri

Dear Mr. Hearnes:

We are in receipt of your request for an opinion as follows:

"The office of Secretary of State formally request an opinion clarifying this situation.

Is it permissible and if so under what conditions and limitations can the prefix "Doctor" be placed on the ballot."

The answer to your question involves a construction of the Missouri election laws. The basic section of the statute is Section 120.340, RSMo 1959, which provides in part that the name of no candidate shall be printed upon any official ballot at any primary election unless such candidate in due time has filed a written declaration "stating his full name" etc. A number of other statutory provisions refer to the "name" of the candidate. For example, Section 120.380 requires the Secretary of State to transmit to the county clerks a certified list containing the name of each person who has filed declaration papers in his office; and Section 120.420 provides for an official ballot on which "the names of all the candidates who shall have filed declaration papers" shall be printed.

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The "name" to be printed on the ballot can be only the "full name" which must be stated by the candidate in his declaration of candidacy. Your request involves a determination of the legislative intent in requiring that the "full name" of the candidate be stated in the declaration and printed on the ballot.

Section 1.090, RSMo 1959, provides: "Words and phrases shall be taken in their plain and ordinary and usual sense." In a case involving the use of the word "name" in a statute relating to the assessment of personal property (State ex rel Lane v. Cornell, Mo. Sup., 149 SW2d 815,821) Judge Dalton stated:

"A person's name is the designation ordinarily used, and by which he or she is known in the community. Names are used as a method of identification. Whether the identification is sufficient is ordinarily a question of fact."

The foregoing statement accords with the usual concept of a name, that is, that it is the distinctive characterization by which the person is generally known and distinguished from others. However, mere description is not usually recognized as the equivalent of a name. See 65 C.J.S. Names §1, p. 2. By the common law, a person's "legal" name has consisted of one given name and one surname or family name. 65 C.J.S. §3, p. 2. It is also the general rule that prefixes such as "Dr.", "Mr." and "Mrs." are mere titles descriptive of the person referred to but are not names or parts of names. So too, a suffix such as "Sr.", "Jr." or some other word or numeral of similar import added to a name is ordinarily not a part of the person's name but is generally considered a matter of description adopted for convenience. 65 C.J.S., Names §5, pp. 6-7. In Hunt v. Searcy, 167 Mo. 158, 67 SW 206, 208, the court ruled this matter as follows:

"The addition or suffix 'Sr.' is no part of the name of a person. Neil v. Dillon, 3 Mo. 59. 'The abbreviations "Jr." and "Sr." are no part of the name proper.' 1 Enc. E. & Prac.

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(Ed. 1895) pp. 46,47, and a great number of cases cited in note 3, where it is said, "The commonly abbreviated prefixes and suffixes are not considered either as names in themselves, or as parts of names."

We have found no Missouri case which concerns the use of the title "Doctor" or "Dr." in connection with the name of a person. Other states have considered this question. Thus, in *Hamilton v. Shredded Wheat Sales*, 54 R.I. 285, 172 A. 614 the court stated:

"In the above entitled action we note that the name of the plaintiff appears as 'Dr. James Hamilton'. The designation 'Dr.' is a title and is no part of the name of the plaintiff. It is therefore improper pleading so to designate the plaintiff."

And in *Gears v. State*, 203 Ind. 3, 176 N.E. 553, the Court ruled:

"The evidence in this case justifies us in saying that the letters 'Dr.' have a well understood meaning, and when used as a prefix, as in the affidavit before us, they serve as a description but do not add to and detract from the true name of a person."

A number of authorities have ruled that the prefix "Mrs." is a mere title and no part of the person's name. Thus, in *Feldman v. Silva*, 54 R.I. 203, 171 A. 922, it was said:

"The designation of 'Mrs.' is a mere title and is no part of petitioner's name."

In *Carlton v. Phelan* (Fla.) 131 So. 117, the court stated:

"The prefix [Mrs.] is not a name, but a mere title that usually distinguishes the person referred to as a married woman."

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The Corneli case, noted above, was a certiorari proceeding involving the validity of an assessment of a personal property tax against the estate of "Mrs. N. B. Wilson". The decedent's "true" name was Sarah L. G. Wilson. The name of her late husband was Newton R. Wilson, and it was contended that the decedent was known as Mrs. N. B. Wilson. The Court held that the order of the county board of equalization assessing the tax in the name of Mrs. N. B. Wilson was not void on its face.

That case involved a tax statute which usually requires more specificity in names. It is to be noted, however, that the court referred to the absence of language in the statute which would require that such assessments of personal property be in the "full, true, and lawful name of the owner". On the other hand, the statute which is involved in the present matter (Section 120.340) does require the candidate to state his "full name". We do not believe, however, that the word "full" was intended to be literally applied. In our view, the statute does not require the use of one's "legal" name in the common law sense, nor does it necessarily exclude the use of prefixes or suffixes.

In State ex rel Public Service Co. v. Cowan, 356 Mo. 674, 203 SW2c 407, 408, Judge Hyde speaking for the court stated:

"After all, a name is only what one calls himself for purposes of identification.  
See 45 C.J. 367, Sec. 1."

In State v. Deppe, Mo. Sup., 286 SW2d 776, 781, it was said:

"A person's name is the title by which habitually he calls himself and others call him \* \* \*"

See also Ohlmann v. Clarkson Sawmill Co., 222 Mo. 62, 120 SW 1155, 1157.

Election laws should be construed liberally to avoid unduly restricting and circumscribing the right of a citizen to be a candidate for office. See State ex rel Haller v. Arnold, 277 Mo. 474, 210 SW 374, 376, in which the court referred to "the untrammelled constitutional privilege of all eligible persons to become candidates for office." This privilege should not be hedged about "with such conditions as materially to impinge upon the guarantee of the Constitution that 'all elections shall be free and open.'"

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In Preisler v. City of St. Louis, Mo. Sup., 322 SW2d 748, 753, the court said:

"We agree that every eligible person has the right under the constitutional guarantee of free and open elections to become a candidate for office (citing cases); and that restricting that constitutional right in such manner as to effectively deny and improperly impede it is a violation of the guarantee..."

Candidates should have the right, absent compelling reasons to the contrary in a particular situation, to have his name placed before the electorate in such manner that his true identity is disclosed, not concealed. The best way to effectuate the purpose of our election laws and the constitutional guarantees relating to elections is to construe the words "name" and "full name" in accord with Judge Dalton's definition above quoted, namely that "a person's name is the designation ordinarily used, and by which he or she is known in the community."

The foregoing concept was expressed in Huff v. State Election Board, 168 Okla. 277, 32 P. 2d 920, 93 ALR 906, in which the court sustained the right of a woman (married to I. L. Huff) to have her name printed upon the official primary ballot as "Mrs. I. L. Huff". The contention was that "Mrs." was a mere title and not a part of the candidate's name and therefore could not be adopted by her as such. The applicable statute provided for the candidate to file a declaration stating "name in full as desired on the ballot." The Court ruled as follows:

"There are frequently many candidates for the several elective offices and the voters are only acquainted with them or many of them by the names by which they are commonly known and called. That fact was known to the Legislature when it enacted the primary election law and it is clearly the legislative intent that the candidate shall be so identified on the primary and run-off

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primary ballot that the voters may know for whom they cast their ballot and not be deceived or misled to vote for some candidate for whom they did not intend to vote, so it is not so much a question as to the true legal name of the candidate as it is that the voter may be informed as to the candidates by the names by which they are commonly known and called and transact their important private or official business.

\* \* \*We shall content ourselves with expressing our adherence to the views of those courts which hold that a person may change his or her name in good faith and for an honest purpose, by adopting a new name and transacting his or her business and holding himself or herself out under the new name, with the acquiescence and recognition of his or her friends, and this right is not abrogated by the Constitution or any statute of this state; and that under the circumstances of this case a married woman has the right to adopt 'Mrs.' as a part of her name with equal propriety as she could an additional Christian or given name or initial."

In *Gearing v. Carroll*, 151 Pa. 79, 24 A. 1045, 1046, the court, citing with approval the earlier Pennsylvania case of *Laflin & Rand Powder Co. v. Steytler*, 146 Pa. 434, 23 A. 215, held that the statutory requirement of a limited partnership act that the "full names" of the members be used "is met by giving the names in the form habitually used by those persons in business, and by which they are generally known in the community." In that case, the "full name" as given by the partner was D.W.C. Carroll, although his legal name was DeWitt Clinton Carroll. The *Laflin* case contains a persuasive exposition on the meaning of the words "full names". It was there said:

"A man's name is the designation by which he is distinctively known in the community.

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Custom gives him the family name of his father, and such praenomina as his parents choose to put before it, and appropriate circumstances may require 'Sr.' or 'Jr.' as a further constituent part. But all this is only a general rule, from which the individual may depart if he chooses. The legislature in 1852 provided a mode of changing the name, but that act was in affirmance and aid of the common law, to make a definite point of time at which a change shall take effect. But without the aid of that act a man may change his name or names, first or last, and when his neighbors and the community have acquiesced and recognized him by the new designation, that becomes his name\* \* \* A name therefore, is the title used for the identification of an individual and the intent of its requirement in full is certainty of such identification. The full name, therefore, is no more than the whole of such title as it is used by himself and his neighbors for such purpose. To construe the statute to require the literal and absolute following of the entire list of names a person may have had bestowed upon him would be giving it not only a very narrow and technical construction which serves no purpose of the act, but even one which might tend to defeat its real intent. A statement signed 'Stephen Grover Cleveland' would not create certainty, but doubt as to its author."

We are therefore of the opinion that whether the use of a prefix or suffix constitutes part of the name of a person so that it may be printed upon the official ballot depends upon the facts in each case. In view of the law that a prefix or suffix is not ordinarily a part of a person's name, we believe that the burden would rest upon the person desiring the use thereof (in the event such use was questioned) to reasonably satisfy the appropriate official that such prefix or suffix has in fact been adopted and used as part of his name and that he is generally known and recognized in the community by that name.

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With respect to the specific question posed in your letter, this office has heretofore ruled in an opinion issued to Honorable John E. Downs, dated March 25, 1954, that "When a candidate for public office uses, in political advertising and on the voting ballot, the prefix 'Doctor' or 'Dr.' before his name, it must be followed by suitable words or letters clearly designating the degree held by such person, or the particular type of practice in which such person is engaged."

That opinion was based upon the provisions of Section 564.290, RSMo 1959, which prohibits any person licensed to practice medicine, surgery, dentistry, optometry, osteopathy, chiropractic, chiropody or veterinary surgery, or specifically permitted by law to practice the curing, healing or remedying of ailments, defects or diseases of body or mind with or without a license, from using the prefix "Doctor" or "Dr." in connection with his name in various specified situations including any "public listing or display of any nature whatsoever" without affixing thereto suitable words or letters designating his degree or type of practice. We believe that such opinion was correctly ruled insofar as it held that Section 564.290 applied to candidates for public office. It should be noted, however, that the opinion does not discuss or expressly rule the further question of whether our election laws actually authorize the use on official ballots of descriptive matters such as the degree held by the candidate or the particular type of practice in which he is engaged or licensed to practice, but assumes (at least as to municipal elections in cities of the first class) that such use is permissible. In our opinion, the assumption is erroneous.

In State ex rel Whetsel v. Murphy, 122 Ohio St. 620, 174 NE 252, it was said:

"This court is of the opinion that it is unlawful to place any characterization or description either before or after the name of a candidate upon a ballot either at the primary or general election where there is not such identity of the names of two or more candidates as to justify some description which will permit the voters to make an intelligent expression of his choice."

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That case ruled that the use of the letters "M. D." which were appended after the name of a candidate for coroner was improper. We agree with such conclusion. There is no authority in our election laws which would permit the use of descriptive matter such as M. D., O.D., D.D.S., Christian Science Practitioner and the like in addition to the name of the candidate. In our opinion, the "name" of a person may not reasonably be held to include as part thereof either the degree he holds or any other purely descriptive matter.

CONCLUSION

The "full name" of a candidate, to be printed on the official ballot is the designation or distinctive characterization ordinarily used by such person and by which he is known and recognized in the community, and may include, when warranted by the facts, prefixes such as "Mrs." and "Dr." and suffixes such as "Sr." or "Jr.". However, the "name" cannot include purely descriptive matter such as the degree held or the occupation in which he is engaged. Since the use of the word "Doctor" or "Dr." would be illegal without designating the degree or type of practice, a doctor included in Section 564.290, RSMo 1959, may not use such prefix as part of his name for use on the ballot.

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

Yours very truly,

THOMAS F. EAGLETON  
Attorney General

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