

September 21, 1962



Honorable William H. Bruce, Jr.
Prosecuting Attorney
Reynolds County
Centerville, Missouri

Dear Mr. Bruce:

This letter is in response to your letter of August 22, 1962, requesting an opinion on the following matters:

"The Clerk of the County Court and the various officers of the County, together with the Democratic Central Committee of Reynolds County, Missouri, have all asked to write to you for an official opinion. In addition, I need an official opinion myself.

One Robert B. Baker filed a declaration as a candidate for nomination as Prosecuting Attorney in the Democratic Primary of August 7, 1962. One Billy Joe Fox did the same for County Collector on the Democratic ticket. Both were defeated.

Section 120.370 provides that no person shall file a declaration to be the candidate of more than one party.

Mr. Baker, Mr. Fox, and a Mr. Robert C. Stark, who did not seek nomination on August 7, 1962, have now filed petitions to establish a new political party in Reynolds County, in which petitions, Mr. Baker seeks to run for Prosecuting Attorney, Mr. Fox for County Collector, and Mr. Stark for State Representative. They are attempting to run on the 'Hardhead Party' ticket; their new party.

The petitions were filed with the County Clerk on August 20, 1962. All three of these gentlemen refused to pay any filing fee whatever. In addition, Mr. Fox refused to sign his declaration. Section 120.220 provides that such petitions must be filed 'at least 78 days' prior to the general election. Section 120.210 requires a statement of candidacy and the whole chapter seems to require a filing fee (Cf. 120.360).

I am of the opinion that the wording of the statute, 'at least 78 days prior' would have required that the petitions be filed on Sunday, August 19th. The County Clerk made a point of being available until midnight. However, in some instances, when a thing is to be done on a Sunday, the time is extended to the following Monday. However, in this case the statute reads (at least) rather strongly.

The clerk has taken the position that the petitions were filed too late; that no person may be the candidate of two parties in the same election; that the declaration must be signed and that the filing fees must be paid. Accordingly, he does not plan to place the 'Hardhead Party' on the ballot. However, we need your opinion, since we want to be fair about the matter. Since the ballots must be printed shortly, we would like to have an early reply."

The statutes of Missouri provide two methods by which a candidate for public office may have his name placed on the ballot at the general election. Sections 120.140 to 120.230 provide for the nomination of a candidate by new political parties and by a required number of electors filing petitions. (All references to sections herein will be to sections in Revised Statutes of Missouri, 1959, unless otherwise designated). Sections 120.300 to 120.650 provide for the nomination of candidates by established political parties by the primary election method. Preisler v. City of St. Louis, (1959) Mo. 322 S. W. 2d 748. The petition method is a separate and supplementary method to the state primary election for nominating candidates. State v. Toberman, (1954) Mo. 269 S. W. 2d 753. The candidates mentioned in your letter are apparently seeking a nomination as candidates of a new political party governed by Section 120.160.

Section 120.350 provides that candidates, with certain exceptions, must pay filing fees as prescribed therein. Section 120.340 requires each candidate to file a declaration of candidacy. Section 120.370 forbids any candidate to file more than one declaration indicating the party designation under which his name shall be printed on the official ballot. It is our opinion each of these sections and the requirements contained therein apply only to candidates seeking the nominations by the state primary method. They do not apply to candidates listed for nomination in petitions for the establishment of new political parties. Therefore, the County Clerk may not refuse to list the candidates in question on the grounds they have not complied with these sections.

The next general election is scheduled for November 6, 1962. Section 1.020(3). Section 1.040 provides:

"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 is Sunday it shall be excluded."

Excluding November 6th, the last day a petition to establish a new political party may be filed is August 19, 1962; seventy-eight (78) days previous to the election for which the candidates are nominated. Section 120.122. As this day falls on a Sunday it shall be excluded, and Monday, August 20, 1962, becomes the final date for filing such a petition. No petition filed on that date may be excluded as untimely filed in violation of Section 120.220.

However, Section 120.210 requires each petition of nomination to include a statement of candidacy for each of the candidates named therein. Each such statement must be subscribed and sworn to by the candidate in question. It is the opinion of this office that this Section also applies to candidates listed on petitions seeking to establish new political parties. Section 120.160, subparagraph 3. Therefore, the County Clerk should not place the name of anyone as a candidate on the "Hardhead Party" ticket who has not filed a signed and notarized statement of his candidacy. It is also our opinion the County Clerk may not refuse to place the "Hardhead Party" and candidates who have properly filed declarations of candidacy on the ballot for the other reasons given.

Yours very truly,

THOMAS F. EAGLETON
Attorney General