

SHERIFFS:
ELECTIONS:
NOMINATION TO
FILL VACANCY:
PARTY COMMITTEES:

1. An election to fill the vacancy in sheriff's office in Randolph County, Missouri, due to death of sheriff on September 4, 1962, must be held at the time of the general election in November, 1962.
2. The person elected as sheriff can qualify and assume his duties immediately after the election.
3. Each party county committee has authority to nominate a person on its party ticket to run for sheriff.
4. The names of the nominees selected by the county party committees must be on the regular general election ballot.

Opinion No. 336 (1962)

September 19, 1962

Honorable Channing D. Blaeuer
Prosecuting Attorney
Randolph County
Moberly, Missouri



Dear Mr. Blaeuer:

In your letter of September 10, 1962, you state that a vacancy occurred in the office of the sheriff of Randolph County, Missouri, due to the death of the sheriff which occurred on September 4, 1962; that the County Court of Randolph County on September 4, 1962, made an order appointing an individual to serve as sheriff until his successor is elected and qualified. In your letter you requested an opinion concerning the following questions, to-wit:

"1. Does Missouri law require that a election be held at the time of the General Election in November, 1962, to select a Sheriff to serve the unexpired term of the deceased Sheriff?

"2. If said election is held, does the person who is elected Sheriff qualify immediately upon election, and if not immediately, then when may he qualify?

"3. Do the party committees of the County have the authority to make nominations of persons to run as candidates for Sheriff in the general election of November, 1962, and if so, whose duty is it to advise the party committees of the County of their duty to nominate and to whom do the party committees certify the names of their candidates?

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"4. In the event the law requires said election to be held at the time of the general election in November, 1962, what are the duties of the County Clerk, with respect to public notice of said election, and lastly, should the names of the nominees selected by the party committees appear on a separate ballot or may they appear on a regular general election ballot?"

Concerning the first question that you have submitted, Section 57.080, RSMo 1959, provides in part as follows:

"Whenever from any cause the office of sheriff becomes vacant, the same shall be filled by the county court; if such vacancy happens more than nine months prior to the time of holding a general election, such county court shall immediately order a special election to fill the same, and the person by it appointed shall hold said office until the person chosen at such election shall be duly qualified, otherwise the person appointed by such county court shall hold office until the person chosen at such general election shall be duly qualified; * * *"

It is obvious under this above quoted statute that the sheriff must be elected at the general election in November, 1962. This statute expressly states that when a vacancy occurs more than nine months prior to the time of holding a general election, the County Court shall order a special election, but if the vacancy is less than nine months prior to a general election a person to fill the vacancy shall be chosen at the general election.

Section 1.020(3), RSMo 1959, provides:

"'General election' means the election required to be held on the Tuesday succeeding the first Monday of November, biennially;"

Certainly the election to be held this coming November is a general election.

Regarding the second question you have submitted, it is our opinion that the person who is elected sheriff to fill the vacancy for the unexpired term may qualify immediately

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upon his election since he is elected to replace a person who was appointed. This statute (Section 57.080) expressly states that when the County Court has appointed a person to hold the office that he holds it until a person chosen at the general election shall be duly qualified. He is qualified when he has been elected and the County Clerk has delivered to him a certificate of his election under the seal of the County Court as provided in Section 57.010, RSMo 1959, and has executed and delivered a bond as required by Section 57.020, RSMo 1959, and caused his certificate and his official bond to be recorded in the office of the Recorder of Deeds in the county where he is elected, as provided by Section 57.070, RSMo 1959.

Concerning the third question you have submitted, Section 120.550, RSMo 1959, provides in part:

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

* * * *

"(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."

It appears clear that under this section, since the vacancy in this office occurred after the primary election which was held in August, 1962, that the party committee of the county has authority to nominate a person for the office of sheriff at the general election in November, 1962.

It must be observed that under this statute it is not mandatory for a party committee to make nominations to fill vacancies. They may do so if they so desire and there is no duty on anyone to advise a party committee of the vacancy.

Under paragraph 2 of Section 120.550, RSMo 1959, it is provided that nominations to fill a vacancy caused by death shall be filed with the election authority not later than ten (10) days before such election. Under this provision of the statute it is the duty of the party committee of the county, if they nominate a person to fill the vacancy caused by death, to file the nomination with the county clerk, who would be the election authority in this particular case.

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In answer to your fourth question you have submitted, Section 120.580, RSMo 1959, provides:

"At least seven days before an election to fill any public office, the clerk of the county court of each county shall cause to be published in two newspapers representing each of the two major political parties, if such there be, and if not, then in two newspapers, or if there be only one newspaper published within the county then in such newspaper, the nominations to office certified to him by the secretary of state and also those filed in his office. He shall make two such publications in each of such newspapers before the election, one of which publications in each newspaper shall be upon the last day upon which such newspaper is issued before the election; provided, that no higher rates shall be paid per inch, than is provided by section 493.030, RSMo."

It must be observed that under this section it is the duty of the county clerk at least seven days before an election to fill any public office to cause to be published the nominations of the office certified to him by the secretary of state and also those filed in his office. This would include the nominations filed by the county party committees.

Section 120.590, RSMo 1959, provides that the notice to be published by the county clerk under Section 120.580, and requires the notice to be a copy of the ballot to be voted.

Section 111.410, RSMo 1959, requires the clerk of the county court in each county to provide printed ballots for every election for public offices and to cause to be printed on the ballot the name of every candidate whose name has been certified to or filed with him. Section 111.420, RSMo 1959, provides that every ballot printed shall contain the names of every candidate whose nomination for any office specified on the ballot has been certified or filed.

It is our opinion that under the provisions of the above cited statutes the names of the nominees selected by the party committees must appear on the same ballot that is used at the general election for the selection of all public officials.

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CONCLUSION

It is the opinion of this office that:

1. Under the law it is required that an election for the office of sheriff of Randolph County, Missouri, be held at the time of general election, November, 1962, to select a sheriff to serve the unexpired term of the sheriff who died on September 4, 1962.

2. That the person who is elected sheriff shall assume the duties as soon as he qualifies by taking the oath of office, executing a bond and recording the same with his certificate of election with the Recorder of Deeds of the county.

3. Each of the committees of the county has authority to nominate a candidate to run for sheriff on its respective party ticket at the general election, 1962, and the names of the persons who are nominated shall be filed with the county clerk by said committees.

4. That the names of the nominees selected by the party committees must appear on the regular general election ballot and not on separate ballots.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Moody Mansur.

Yours very truly,

THOMAS F. EAGLETON
Attorney General

MM:JH:BJ