

FILED

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May 13, 1964

Opinion No. 142  
Answered by letter

Honorable Ronald M. Belt  
State Representative  
115 1/2 Vine Street  
Macon, Missouri

Dear Mr. Belt:

This letter is in response to your request of March 18, 1964, for an official opinion of this office. You inquire:

"Under the provisions of Subsection (1) of Section 120.545 if an incumbent dies or becomes disqualified after the closing of the filing period for any Primary Election, the statute provides that filing for the office shall be reopened for a period of five days. I request your opinion as to whether or not this reopening for a period of five days would apply if there were candidates other than the incumbent who had previously filed prior to the closing of the filing period."

Section 120.545, RSMo 1963 Supp., provides:

"1. Except as provided in subsection 2, if a candidate for nomination to an office of which he is the incumbent dies, withdraws or becomes disqualified after the close of the filing period for any primary election, filing for the office shall be reopened for a period of five days following the death, withdrawal or disqualification during which period new candidates may enter and file their declarations of candidacy.

"2. If a candidate for nomination to an office of which he is the incumbent dies, withdraws or becomes disqualified following the sixteenth day next preceding the date of the primary election the election and canvass shall proceed and if a sufficient number of ballots are marked as being voted for the deceased to entitle him to nomination had he lived until after the election a vacancy exists on the general election ballot which shall be filed in the manner provided in section 120.550.

"3. This section shall not apply if the incumbent was the sole party candidate for nomination to the particular office."

Section 120.545 (1) is applicable to only one situation, that is, when the incumbent of an office dies, withdraws or is disqualified after the close of filing for such office and there are one or more other candidates filed on the same party ticket for that office, then the filing period is reopened for a period of five days following such death, withdrawal or disqualification.

We call your attention to Section 120.550, RSMo 1959, which applies when a vacancy in the candidates for nomination as a party candidate exists.

Therefore, the provisions of Section 120.545, RSMo 1963 Supp., apply if the candidates for nomination are the incumbent and others and the incumbent dies, withdraws or becomes disqualified after the close of the filing period for any primary election.

Very truly yours,

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THOMAS F. KAGLETON  
Attorney General

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