

ELECTIONS: A declaration of candidacy which contains a mis-  
CANDIDATES: statement of the office being sought may not be  
corrected or amended subsequent to the filing dead-  
line of five p.m. on the last Tuesday in April pre-  
ceding the primary election.

OPINION NO. 274

May 15, 1968

Honorable James C. Kirkpatrick  
Secretary of State of Missouri  
Capitol Building  
Jefferson City, Missouri



Dear Mr. Kirkpatrick:

This is in response to your request for an opinion which was stated as follows:

"During the last few days of filing for state office we had several instances in which an individual filed for state representative for a district in which he does not reside.

Now some of these people are requesting that their declaration be corrected by placing their candidacies in the district required by their residence. \* \* \* "

Section 120.340, RSMo Cum. Supp. 1967, provides in part as follows:

"The name of no candidate shall be printed upon any official ballot at any primary election unless the candidate has on or before five p.m. prevailing local time on the last Tuesday of April preceding the primary filed a written declaration, as provided in Sections 120.300 to 120.650, stating his full name, residence, office for which he proposes as a candidate, the party upon whose ticket he is to be a candidate, that if nominated and elected to the office he will qualify, and the declaration shall be in substantially the following form. . ." (Emphasis added.)

Honorable James C. Kirkpatrick

Enclosed is a copy of Opinion No. 18, Collins, 5/25/50, which concerns the application of Section 120.340 to a person who fails to state in his declaration the office for which he is filing. That opinion rules that where a declaration of candidacy is filed but the office is left blank that such declaration is ineffective and the name of the person filing such declaration should not be printed on the ballot.

In the question which you present the person has misstated the office for which he is a candidate. We believe that a misstatement of the office sought makes the declaration of candidacy equally ineffective as does a nonstatement of the office sought.

Also enclosed is a copy of Opinion No. 54, Long, 6/8/38, which considered a situation where a person filed for the office of Justice of the Peace, but failed to state the township in which he was a candidate. That opinion involved an interpretation of Section 10257, RSMo 1929, which for purposes of the present opinion was exactly the same as previously quoted Section 120.340. The ruling there was that the failure of a candidate for Justice of the Peace to state in his declaration the particular municipal township in which he desires to become a candidate is fatal to his declaration, and the county clerk should not cause his name to be printed on the primary ballot.

Section 120.340 is mandatory in its requirement that a declaration of candidacy be filed prior to five p.m. on the last Tuesday of April preceding the primary. There are no exceptions made for correcting or amending the declaration of candidacy subsequent to the filing deadline.

The Texas Supreme Court has recently considered a situation which was very much similar to the subject of this opinion. In the Texas case a Mr. Lacy filed for Justice of the Peace and stated an address for his legal residence which happened to be outside the requisite Justice of the Peace precinct. Subsequent to the deadline for filing applications, Lacy attempted to claim mistake and filed an affidavit which allegedly proved his legal residence to be within the precinct. The Texas Supreme Court, in holding that Lacy was ineligible for a place on the ballot, stated:

"[3] In the case here the Committee did not attempt to determine any fact question but accepted Mr. Lacy's statement as to his place of residence on its face value. Actually what Mr. Lacy is saying here is that his solemnly acknowledged statement given to the Committee for the purpose of

Honorable James C. Kirkpatrick

placing his name on the ballot as a candidate was false. He was not misled in any way in making that statement. If it was false Mr. Lacy must have known so at the time. The Committee is not authorized to question this statement of fact nor will Mr. Lacy be allowed to do so after the deadline has been passed and the machinery for preparation of the ballots has been set in motion."

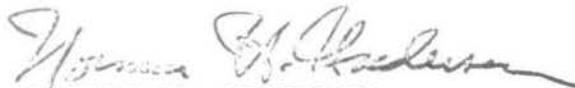
Canady vs. Democratic Exec. Com. of Travis County, (Tex. 1964), 381 S.W. 2d 321, 324.

CONCLUSION

Therefore, it is the opinion of this office that a declaration of candidacy which contains a misstatement of the office being sought may not be corrected or amended subsequent to the filing deadline of five p.m. on the last Tuesday in April preceding the primary election.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Richard E. Dorr.

Very truly yours,



NORMAN H. ANDERSON  
Attorney General

Enc.--Op. No. 18; Collins; 5/25/50  
Op. No. 54; Long; 6/8/38