

PRIMARY ELECTIONS:
FILING FOR ELECTIONS:
DEATH OF INCUMBENT:

If a candidate for nomination to an office of which he is an incumbent dies, withdraws or becomes disqualified after the close of the filing period for any primary election

within the provisions of Subsection 1 of Section 120.545, RSMo Cum. Supp., 1967: (1) The five day reopened period for filing provided for in Section 120.545 commences immediately, the first day being the day immediately following the death, withdrawal or disqualification of the incumbent; (2) There are no requirements for notice to be given with regard to the opening of the five day reopened filing period provided for in Section 120.545; (3) The five day reopened filing period shall run on consecutive days unless the last day happens to be a Sunday in which case Sunday shall be excluded and the last day shall be Monday.

OPINION NO. 335

July 30, 1968

Honorable James C. Kirkpatrick
Secretary of State of Missouri
Capitol Building
Jefferson City, Missouri 65101



Dear Mr. Kirkpatrick:

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

"Recently a Representative in the Missouri Legislature, from St. Louis, withdrew as a Candidate. The following questions have arisen:

1. When does the reopening of the filing period begin?
2. Upon whom does the duty fall for giving notice of the opening of the 5-day filing and in what form?
3. Does the 5-day reopening period include Saturday and Sunday or only those days when the Office of Secretary of State is normally open for business?"

The applicable statute is Section 120.545, RSMo Cum. Supp., 1967 which provides as follows:

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"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.

"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.

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

Computation of time periods such as the five (5) day filing period provided for in Section 120.545 must be made in accordance with Section 1.040, RSMo 1959:

"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."

1. Your first question concerns when the reopened filing period begins.

Enclosed is Op. Atty. Gen. No. 194, Hearnes, 5/13/64, which rules that the filing period provided for in Section 120.545 is reopened commencing immediately. In light of Section 1.040 this means that the first day of the five day period would be the day immediately following the day of the incumbent's death, withdrawal or disqualification.

2. Your second question concerns requisite duties to give notice of the filing period.

There are no provisions in Section 120.545 requiring any notice to be given with regard to the five day filing period. In light

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of the fact that the period for filing begins immediately upon the incumbent's death, withdrawal, or disqualification, it is apparent that the legislature did not intend for there to be notice given with regard to the reopened period.

3. Your third question concerns the scope of the five day period.

There are no exceptions made for certain days of the week in the five day filing period provided for in Section 120.545.

The only other applicable statute is 1.040 which provides that if the last day of the time limit falls on Sunday, it shall be excluded. Therefore the five day period shall run on consecutive days except for the factual situation in which the last day of the period falls on Sunday.

Section 120.340, RSMo Cum. Supp., 1967 contains the requirements of the declaration of candidacy which must be filed by a candidate under Section 120.545. Section 120.340 gives the candidate until five p.m. on the last day of the filing period to file his declaration.

Therefore since the legislature has indicated that Section 120.-340 is applicable to the reopened filing period and Section 120.-345, RSMo Cum. Supp., 1967, requires that candidates for state representative file in person, it follows that the Secretary of State must be available to receive the candidate's declaration of candidacy until five p.m. of the last day of the five day period. This would apply equally as well to a Saturday if it was the last day of the period.

CONCLUSION

Therefore it is the opinion of this office that if a candidate for nomination to an office of which he is an incumbent dies, withdraws or becomes disqualified after the close of the filing period for any primary election within the provisions of Subsection 1 of Section 120.545, RSMo Cum. Supp., 1967:

1. The five day reopened period for filing provided for in Section 120.545 commences immediately, the first day being the day immediately following the death, withdrawal or disqualification of the incumbent.

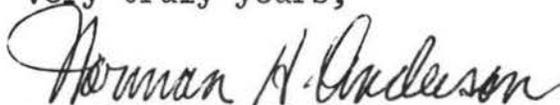
2. There are no requirements for notice to be given with regard to the opening of the five day reopened filing period provided for in Section 120.545.

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3. The five day reopened filing period shall run on consecutive days unless the last day happens to be a Sunday in which case Sunday shall be excluded and the last day shall be Monday.

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

Very truly yours,



NORMAN H. ANDERSON
Attorney General

Enclosure: Op. Atty. Gen. No. 194-
Hearnes-5/13/64