

March 17, 1972

OPINION LETTER NO. 88

Answer by Letter - Klaffenbach

Honorable Donald J. Gralike
State Representative, District 49
Room 301 Capitol Building
Jefferson City, Missouri 65101



Dear Representative Gralike:

This letter is in response to your opinion request in which you ask:

"If in the event the Treasurer of the county committee is not available is it permissible to file in cash or by cashier check along with declaration of candidacy with the Board of Election Commissioners?"

Subsection 3 of Section 120.780, RSMo 1969 to which you refer provides:

"Any qualified elector in the township or ward may have his or her name printed on the primary ballot or party ticket on which he or she may desire to become a candidate for committeeman or committeewoman, by paying a filing fee to the treasurer of the county committee and by filing a receipt showing the payment of the filing fee and a declaration of candidacy with the board of election commissioners or county clerk as is required by section 120.340. In all counties of the first class containing a city which now has or may hereafter have a population of more than three hundred and fifty thousand inhabitants, the fee is twenty-five dollars, and in all other counties of the first class the fee is one hundred dollars."

Honorable Donald J. Gralike

You further advise that the problem is centered about the treasurer's not being readily available to the candidates.

We are of the view that your question is answered by our Opinions No. 37, dated June 4, 1954 to Hamilton and No. 100, dated February 13, 1964 to Schellhorn, which are self-explanatory and which are enclosed.

Although these opinions which interpreted provisions similar to the provision you question hold that the procedure prescribed is not mandatory, we wish to caution you that the cases relied on, State ex rel. Haller v. Arnold, 210 S.W. 374 (Mo. 1919) and State ex rel. Neu v. Waechter, 58 S.W.2d 971 (Mo. 1933) noted that the candidate was not at fault and that such a provision would be unconstitutional if it required simultaneous filing of the receipt and declaration in all circumstances.

There is no authority for payment of the prescribed fee to the board of election commissioners.

Thus we conclude that while a deviation from simultaneous filing may be justified in some instances we are not free to hold generally that the procedure prescribed in Section 120.780 may be casually ignored. If an alternative procedure is desired it should be provided by amendment to such section.

Very truly yours,

JOHN C. DANFORTH
Attorney General

Enclosures: Op. No. 37
6/4/54, Hamilton

Op. No. 100
2/13/64, Schellhorn