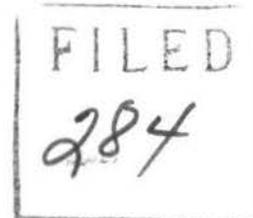


NOMINATIONS: With respect to the filing of nomi-
ELECTIONS: nations by party committees under
CANDIDATES: the provisions of Section 120.550,
SECRETARY OF STATE: RSMo to fill vacancies in the nomi-
nations for state representative and
state senator: (1) The filing must be with the Secretary of
State; (2) Telegraphic filing is not authorized under Section
120.550, RSMo.

OPINION NO. 284

October 25, 1972

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



Dear Mr. Kirkpatrick:

This opinion is in answer to your questions asking:

- "1. Does Section 120.550 provide alternative methods for filing the nomination to fill a vacancy for state office (either with the St. Louis Board of Election Commissioners or the Secretary of State), or must the filing be made in this office? If the filing is made prior to the deadline with the St. Louis Board of Election Commissioners, should the nominees name be placed on the ballot?
- "2. May a nomination to fill a vacancy under Section 120.550 be made by telegram, or must the nomination be a signed, original document?
- "3. If a telegram is an acceptable form of filing a nomination with the Secretary of State, must that telegram be received by the Secretary of State within the filing deadline or is receipt by the local Western Union office sufficient?
- "4. Is the filing fee in Section 120.550-3 required to be paid prior to the deadline for filing and, if not required,

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is the Secretary of State authorized to certify the nominee to the appropriate election authority without that fee having been paid?"

You also state that:

"Arthur Pfautch filed his Declaration of Candidacy as a Republican candidate for State Representative of the 87th Legislative District in this office at 3:17 p.m. April 25, 1972. Richard F. Greenwald filed his Declaration of Candidacy as State Senator on the Republican ticket for the 3rd Senatorial District in this office at 3:18 p.m. April 25, 1972. Both of these individuals were nominated in the primary election.

"On September 21, 1972, both of the above named nominees withdrew, stating they would 'not accept the office if elected.' Their notifications of withdrawal were filed in this office.

* * *

"On Friday, October 6th, Fred Whaley, chairman of the Republican City Central Committee, sent this office two telegrams which stated that Orville Berg and Daniel Kearns had been chosen as nominees for the 87th Legislative District and the 3rd Senatorial District respectively. Those telegrams were apparently stamped in the Jefferson City Western Union office at 8:51 a.m., Saturday, October 7th. They were delivered to this office between 8:30 and 9:00 a.m. on the morning of Tuesday, October 10th. We are informed by Western Union that no attempt was made to deliver the messages prior to that time.

"In addition to the telegram sent this office, Mr. Whaley also delivered written notification of the replacement nominees to the offices of the St. Louis Board of Election Commissioners on Friday, October 6th. He claims that such filing is effective under Section 120.550 and that the candidates' names should appear on the ballot for the general election."

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Section 120.550, RSMo, to which you refer, provides:

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

(1) When a vacancy in the candidates for nomination as a party candidate for election to any office shall occur by reason of death or resignation after the last day in which a person may file as a candidate for nomination;

(2) When any person nominated as the party candidate for any office shall die or resign before election;

(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.

"2. Nominations to fill vacancies caused by death shall be filed, as the case may be, either with the secretary of state not later than fifteen days before the day fixed by law for the election of the person in nomination or with the election authority not later than ten days before such election. Nominations to fill vacancies caused by resignation or withdrawal of a candidate shall be filed with the secretary of state or election authority not later than thirty days before the day fixed for election.

"3. No name shall be allowed on the ballot until the required fee has been paid."

Candidates for the office of state senator or state representative have to file in the office of the Secretary of State. Sections 120.345 and 120.370, RSMo. Under Section 120.550, subsection 2 above, such nominations "shall be filed, as the case may be, either with the secretary of state . . . or with the election authority" in the case of vacancies caused by death. And in instances as here where the vacancy is by resignation the nominations "shall be filed with the secretary of state or election authority." Our view is therefore that the legislature

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intended that the filing be with the secretary of state in this instance and not in the alternative because the provisions read together indicate that the filing would be with the appropriate office only. (Compare Section 120.090, RSMo).

In answer to your second question with respect to whether a telegram is sufficient in the premises it is our view that it is not. Section 120.560, RSMo, although not applicable here, permits a vacancy to be filled when such vacancy "occurs too late to permit the committee to file its nomination within the time prescribed" by Section 120.550, and expressly authorizes the use of the telegraph in cases in which the exigency of time is so great as to require it. However, by comparison, even in that instance the telegraphic message is "to be followed by the filing of the papers." Telegraphic messages may import notice but the statute here requires filing of the nomination and this means the certificate of the party committee's nomination. In passing on the use of the telegraph, the Kansas City Court of Appeals said in Holman v. City of Macon, 177 S.W. 1078, 1080 (1915):

"Defendant, on the last day allowed for such motions, [for rehearing] telegraphed it to our clerk, and two days thereafter put it in writing and filed it. While telegrams are frequently used as evidence in appropriate instances, we are not advised of any law authorizing a court record or a pleading by telegraph. It is a step too radical to be taken without the sanction of the Legislature."

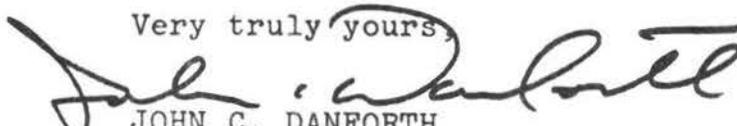
In view of our answer to your second question it is unnecessary to answer your third and fourth questions.

CONCLUSION

It is the opinion of this office with respect to the filing of nominations by party committees under the provisions of Section 120.550, RSMo to fill vacancies in the nominations for state representative and state senator that:

- (1) The filing must be with the Secretary of State;
- (2) Telegraphic filing is not authorized under Section 120.550, RSMo.

Very truly yours,



JOHN C. DANFORTH
Attorney General