

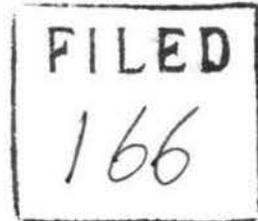
ELECTIONS:
PRIMARIES:
CANDIDATES:

Declarations of candidacy for the 1978 primary election filed after the date of the 1976 November general election (November 2, 1976) and on or before the last Tuesday in April, 1978, are valid declarations of candidacy.

OPINION NO. 166

September 27, 1977

Mr. C. E. Hamilton, Jr.
Prosecuting Attorney
Callaway County, Courthouse
Fulton, Missouri 65251



Dear Mr. Hamilton:

You have asked for an official opinion of this office on the following question:

"Is a declaration of candidacy filed prior to the second Tuesday in January 1978 for the 1978 primary election a valid declaration or must all declarations of candidacy for the 1978 primary election be made after 8:00 A.M. on the second Tuesday in January, 1978?"

The Comprehensive Election Act of 1977 (House Bill No. 101, 79th General Assembly, approved by the Governor July 28, 1977, effective January 1, 1978) contains in § 10.100 the following provisions relative to when declarations of candidacy shall be filed:

"1. Except as otherwise provided in sections 10.123 through 10.155, no candidate's name shall be printed on any official primary ballot unless the candidate has filed a written declaration of candidacy in the office of the appropriate election official by 5:00 p.m. on the last Tuesday in April immediately preceding the primary election.

"2. Except declarations filed for nomination in the 1978 primary election before 8:00 a.m. on the second Tuesday in January, 1978,

C. E. Hamilton, Jr.

no declaration of candidacy for nomination in a primary election shall be accepted for filing prior to 8:00 a.m. on the second Tuesday in January immediately preceding the primary election."

Subsection 1, setting forth the latest time for filing a declaration of candidacy, is carried over without change in substance from existing law. See § 120.340, RSMo Supp. 1975. However, subsection 2, setting forth the earliest time for filing a declaration of candidacy, has no counterpart or equivalent in existing law. An opinion of the Attorney General, No. 38, December 20, 1961, Hearnese, concluded that in the absence of such an express statutory provision, the last general election preceding a primary election would mark the earliest date that declarations of candidacy could be filed. In light of the enactment of § 10.100.2 in the Comprehensive Election Act of 1977, we are now withdrawing the 1961 opinion.

Subsection 2 of § 10.100 appeared as follows in House Bill No. 101 as pre-filed on December 1, 1976:

". . . no declaration of candidacy for nomination in a primary election shall be accepted for filing prior to 8:00 a.m. on the second Tuesday in January immediately preceding the primary election."

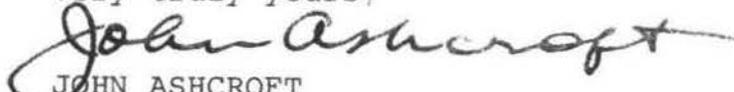
The language excepting a declaration of candidacy filed before January 8, 1978, for the 1978 primary was added during the legislative deliberations on the bill and makes manifest the legislative intention that the statutory limitation on the time for filing declaration of candidacy is not applicable to filing of declarations of candidacy for the 1978 primary.

CONCLUSION

It is the opinion of this office that declarations of candidacy for the 1978 primary election filed after the date of the 1976 November general election (November 2, 1976) and on or before the last Tuesday in April, 1978, are valid declarations of candidacy.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Louren R. Wood.

Very truly yours,


JOHN ASHCROFT
Attorney General