

ELECTIONS: The Act of 1941 deprives the party committee from filling vacancies on the ballot except in cases where the nominee dies or resigns. - - No write-ins on primary ballot except for committeeman or committeewoman.

July 2, 1942

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Honorable Dwight H. Brown
Secretary of State
Jefferson City, Missouri

Dear Sir:

This is in reply to yours of the 1st wherein you request an opinion from this department on whether or not the Act of the General Assembly of 1941 prohibits the party committee from filling the ticket where no person shall offer himself as a candidate before the primary, and also whether or not this Act has changed the previous rules that write-ins on the primary ballot are invalid and must be disregarded as nullities.

Section 11562, R. S. Missouri 1939, which was amended in 1941, provides as follows:

"Vacancies occurring after the holding of any primary or where no person shall offer himself as a candidate before such primary, shall be filled by the party committee of the district, county or state, as the case may be: Provided, however, that no name shall be allowed on any ticket until the required fee shall have been paid."

This section, as amended, Laws of Missouri 1941, page 353, provides as follows:

"Vacancies occurring after the holding of any primary and resulting from the death or resignation, and not otherwise, of the nominee of a party at such primary, shall be filled by the party committee of the district, county, or state, as the case may be: Provided, however, that no name shall be allowed on any ticket until the required fee shall have been paid."

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It will be noted that the 1941 Amendment removes from the old Act the part of the section which authorizes the party committee to fill the ticket where no person shall offer himself as a candidate before such primary.

According to the views expressed in our opinion under date of August 10, 1938 to Mr. Allison, Clerk of the County Court of Buchanan County, and to which you refer in your letter, voters at primary elections cannot write in names of nominees on the ballot except for committeeman. This opinion, on page 3 thereof, refers to Section 11562, supra, and holds that the party committee may fill in the ticket where no person has offered himself as a candidate before the primary. The 1941 Amendment does not change the status of the voter with respect to writing in names on the ballot at the primary. As the law now is, it seems that if no one files for an office in the primary that no voter is permitted to write in names on the ballot nor is the party committee authorized to fill in the ballot.

CONCLUSION

It is, therefore, the opinion of this department that the action of the General Assembly of 1941 has not changed the previous rule that write-ins on primary ballots except for committeemen and committeewomen are invalid and must be disregarded.

Respectfully submitted

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APPROVED:

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