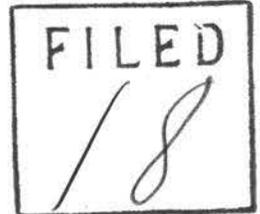


ELECTIONS.

: Declaration of Candidacy required  
: by Sec. 11550 R. S. Mo., 1939,  
: may be signed and filed by *only duly*  
: authorized agent.

May 1, 1944

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Honorable W. Coe  
County Clerk of Atchison County  
Rock Port, Missouri

Dear Mr. Coe:

This will acknowledge receipt of your letter of April 26, 1944, in which you request an opinion from this office. The text of such letter is as follows:

"Please give me your opinion, at once, upon the following question relating to the coming Primary Election.

"Walter L. Mulvania is a citizen and qualified elector of Atchison county, Missouri.

"He is now, and for a long time has been, a soldier in the United States Army, now stationed at Camp Atterbury, Indiana.

"Said W. L. Mulvania on April 25, 1944, sent the following Western Union Telegram to H. P. Savage, a citizen of this city:

'Camp Atterbury, Ind. 819 A. M., April 25th.1944.  
H. P. Savage  
Rock Port, Mo.

'You are authorized to file my candidacy for Prosecuting Attorney Atchison County, Missouri consult my father.

Walter L. Mulvania.'

"Said H. P. Savage on April 25th, 1944, signed the name 'W. L. Mulvania' to Candidate's Declaration, in usual form, and filed the same with above telegram, with me as County Clerk on said date, the declaration being as follows:

"CANDIDATE'S DECLARATION

"I, the undersigned, a resident and qualified elector of Clay Township, City of Rock Port, County of Atchison, and State of Missouri, do announce

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myself a candidate for the office of County Attorney on the Democrat ticket, to be voted for at the primary election to be held on the first Tuesday in August, 1944, and I further declare that if nominated and elected to such office I will qualify.

W. L. Mulvania.'

"Question: Is this a proper filing of a candidate for office under Section 11550, R. S. 1939, so as to entitled said candidates name to be placed on the ticket for the coming Primary Election?"

Section 11550, R. S. Mo., 1939, provides:

"The name of no candidate shall be printed upon any official ballot at any primary election, unless at least sixty days prior to such primary a written declaration shall have been filed by the candidate, as provided in this article, stating his full name, residence, office for which he proposes as a candidate, the party upon whose ticket he is to be a candidate, that if nominated and elected to such office he will qualify; and such declaration shall be in substantially the following form:

"I, the undersigned, a resident and qualified elector of the ( \_\_\_\_\_ precinct of the town of \_\_\_\_\_ ), or the \_\_\_\_\_ precinct of the \_\_\_\_\_ ward of the city of \_\_\_\_\_, county of \_\_\_\_\_ and state of Missouri, do announce myself a candidate for the office of \_\_\_\_\_ on the \_\_\_\_\_ ticket, to be voted for at the primary election to be held on the first Tuesday in August, \_\_\_\_\_ and I further declare that if nominated and elected to such office I will qualify.

(Signed) \_\_\_\_\_."

Section 11553 R. S. Mo., 1939, provides:

"No person shall file more than one written declaration indicating the party designation under which his name is to be printed on the official ballot, and all declaration papers shall be filed as follows:

"1. For state officers, representatives in congress, courts of appeals and circuit judges, and those members of the senate and assembly whose districts comprise more than one county, in the office of the secretary of state.

"2. For officers to be voted for wholly within one county or in the city of St. Louis, in the office of the county clerk of such county or the office of the election commissioners of the city of St. Louis. (R.S. 1929, Sec. 10260.)

These are the two sections relative to the filing of declarations of candidacy, section 11550 above quoted provides "A written declaration shall have been filed by the candidate as provided in this article. Section 11553 provides that where the office is to be voted on wholly within one county, the declaration shall be filed in the office of the County Clerk. Thus we see that there is no specific provision either that the candidate be present at the time of filing or that he sign the declaration himself. The next question is: Is the personal signature of the candidate on the declaration so essential that it must be implied from the sections above quoted, or could such declaration legally be filed and signed by a duly authorized agent? It should be noted that this state has no requirement that the declaration contain any affidavit or that it be verified. All the declaration contains is the statement that a particular person intends to run for certain office and that if nominated and elected, he will qualify. It is submitted that this information is not so essentially personal that it could not be given by a duly authorized agent such as you have here.

In 2 Am. Jur. Sec. 22, it is stated:

"A person may properly appoint an agent to do the same acts and to achieve the same legal consequences by the performance of an act as if he had himself personally acted unless public policy or the agreement with the principal requires personal performance."

In 2 C. J. p. 431, "So also there are many acts regulated by statute which because of their nature or the requirements of the statute must be done personally and cannot be delegated, but it has been held that unless the intention is plainly apparent from the

Hon. Loren W. Coe

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statute the authority may be delegated, the courts applying the maxim "Qui facit per alium facit per se." Citing Finnegan v. Lacy 32 N. E. 656; Webster v. Brown 38 Ill. 87; White v. Holliday, 11 Tex., 606; In re proxy Incorporation 43 Pa. Co. 613.

There is certainly no declaration in the statutes of this state, or the expression of an intention that the act of filing the declaration of candidacy must be performed personally and cannot be done by a duly authorized agent.

In State v. Dye, 163 S. W. (2d) 1. c. 1057, a candidate had filed and signed declarations for five other candidates. The court held that he had a right to do so either if duly authorized or if the other parties ratified his act in so doing. The court stated at page 1057, "Did he have authority and did he act within the scope of his authority in signing said declarations for the others? We think under the uncontradicted facts in this case that he did have authority or that at least, the other relators ratified his acts in so signing their names to said declarations."

CONCLUSION.

It is therefore the opinion of this office that the declaration of candidacy required to be filed by Sec. 11550 R. S. Mo., 1939, may be signed and filed by a duly authorized agent.

Respectfully submitted

ROBERT J. FLANAGAN  
Assistant Attorney General

APPROVED:

ROY MCKITTRICK  
Attorney General

RJF:LeC