

ELECTIONS: Candidates can make affidavits for withdrawal
PRIMARY: of names as candidates for office in primary,
anytime prior to printing of the ballot.

June 20, 1940

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Honorable William Hicks
County Clerk
Jackson County
Kansas City, Missouri

Dear Sir:

This Department is in receipt of your letter of
June 17th, which is as follows:

"Will you kindly advise this office
whether or not you have made a ruling
as to when is the last day for with-
drawal of candidates for the primary
election, of August 6, 1940."

The section giving authority for state and county
candidates to withdraw their names or to abandon their can-
didacies, is Section 10251, R. S. Mo. 1929, which is as
follows:

"But the secretary of state shall not
certify the name of a candidate whose
certificate of nomination shall have
been filed in his office, who shall
have notified him in writing, signed
and executed with the formalities pre-
scribed for the execution of an in-
strument affecting real estate to
entitle it to record, that he will not
accept the nomination contained in
the certificate of nomination. The
clerk of the county court shall not
include in the publication to be made
according to section 10249 the name
of any candidate whose certificate of

nomination shall have been filed in his office who shall have notified him in like manner that he will not accept the nomination. The names of such candidates shall not be included in the names of the candidates to be printed in the ballots as hereinafter provided."

We also refer you to Section 10441, R. S. Mo. 1929, and Laws of Missouri, 1937, page 294. It does not appear that the Laws of 1937 repealed Section 10441. Section 10441 appears to be a barrier prohibiting candidates to withdraw their names, said section being as follows:

"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 it shall be unlawful for his name to appear on more than one ballot at said primary election, and all declaration papers shall be filed with the board of election commissioners of such city, and such declaration papers shall not be withdrawn, but the names of candidates who so declare shall be printed on the official primary ballot."

However, the above section was declared to be of no force and effect by the decision of State ex rel. Neu, Jr., v. Waechter, 332 Mo. 574, l. c. 581, as follows:

"Respondents' construction of Section 10441 cannot be upheld. When it says declaration papers cannot be withdrawn it means just that and nothing more. There are provisions somewhat similar in the general primary law. Section 10243 requires certificates of nomination filed in the offices of the secretary of state and county clerks to be 'preserved'; and Section 10252 makes it a felony, among other things, fraudulently to destroy or suppress any such certificates. And when the statute, Section 10441, provides the names of candidates 'who so declare'

shall be printed on the official primary ballot, it is equivalent to saying the names of those who do not so declare shall not be printed. The very purpose of the law would be defeated if the statute were held to mean the name of every declarant must be published as a candidate regardless of intervening eventualities such as death, withdrawal, etc."

The question then resolves itself into the matter of the last opportunity the candidate has to withdraw his name as a candidate for any office in the primary.

Section 10262, R. S. Mo. 1929, dealing with the duties of the clerk with reference to publishing names, is as follows:

"Such clerks shall, upon receipt thereof, publish, under the proper party designation, the title of each office, the names and addresses of all persons who shall have filed declaration papers, giving the name and address of each, the date of the primary, the hours during which the polls will be opened, and that the primary will be held at the regular polling places in each precinct. It shall be the duty of the county clerk to publish such notice for three consecutive weeks next prior to said primary."

Under the provisions of the above quoted section notices must be three weeks prior to the primary. Therefore, if the candidate is to prevent his name from being published as a candidate he must withdraw prior to three weeks before the primary.

Section 10265, R. S. Mo. 1929, relates to the duties of the clerk with reference to sample ballots and distribution of official ballots, the pertinent part of this section being as follows:

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"On or before the 10th day before the holding of any primary election the county clerk shall correct any errors or omissions in the ballots, cause the same to be printed and distributed, as required by law in the case of ballots for the general election, except that the number of ballots to be furnished to each precinct shall be one and a half times the number of votes cast by any party in the last preceding election and having nominees and tickets at such primary election."

Assuming that a candidate does not withdraw his name from the primary as provided under Section 10251, supra, three weeks prior to the primary as provided in Section 10262, supra, thereby preventing his name from appearing in the notice, we think that he can prevent his name from being printed or withdraw his name from the ballot if such declaration of withdrawal is made before the ballots are printed as provided by Section 10265, supra.

It is, therefore, our opinion that any candidate can make the necessary affidavit for withdrawal of his name anytime prior to the printing of the ballot, and such affidavit should be honored by the county clerk.

Respectfully submitted,

OLLIVER W. NOLEN
Assistant Attorney-General

APPROVED:

COVELL R. HEWITT
(Acting) Attorney-General

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