ELECTIONS: Declaration which fails to state township in which candidate for J.P. desires to run in primary is insufficient.

June 8, 1938

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54

Hon. Edward V. Long
Prosecuting Attorney
Pike County
Bowling Green, Missouri

Dear Sir:

This will acknowledge receipt of your letter of June 4, 1938, requesting an opinion as follows:

"The office of the County Clerk of this County closed at five o'clock Friday, June 3rd. Between the hours of 5:00 P.M. and 6:00 P.M. Friday, June 3rd a written statement was slipped under his door. Following is a copy of such statement.

Louisiana, Mo. June 3 - 1938

I hereby declare myself a candidate for Justice of the Peace on the Democrat ticket and if elected will qualify for same.

John S. Capps, 114½ N Main Street
Louisiana, Mo.
Pike Co., Mo.

This statement was in a plain envelope and was addressed as follows:

To County Clerk
Pike County
Bowling Green, Mo.
Buffalo, J.P.

Louisiana is in Buffalo Township of this County. Please advise me whether or not this man has properly filed."

Your letter presents three questions - all of which bear on the validity of this declaration. These are: (1) Is a candidate for Justice of the Peace in a county not under township organization excepted from paying to the County Central Committee of his political faith the sum of money required of certain candidates in Section 10258, R.S. Missouri, 1929, and filing his receipt for said money with his declaration? (2) Is slipping the declaration under the couuty clerk's office door, within the required time, a sufficient filing thereof? (3) Is this declaration sufficient in itself, and may the envelope in which it was enclosed be considered a part of the declaration?

We shall consider the last question first.

Section 10257, R.S. Missouri, 1929, is as follows:

> "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: *"

In State ex rel. v. Swanger, 212 Mo. 472, the Supreme Court of Missouri considered and determined the effect of a failure to follow the statutes then in force with respect to nominations. This failure was in the affidavit of a qualified elector required to be appended to the nomination paper. The statute required, among other things, that said affidavit shall state that the respective residences of each signer of the nomination paper are stated therein. It was this provision of the statute which the elector's affidavit failed to follow. The court held that such failure was not fatal to the nomination and said at l.c. 477:

> "** * the State Primary Act being highly remedial and not in contravention of the common law, under canonized rules of construction its provisions should be liberally construed to further and give force to its beneficent life and purpose in advancing the remedy provided and retarding the mischief struck at. The rigor of very strict compliance with the minutiae of directory provisions (such as this) of the Primary Act is not to be exacted at the hands of the plain citizens unskilled in technical percision who are called upon to initiate action under the primary law, unless vehement call is made therefor by the act. The mind of the judicial interpreter of such a law must not be narrow and on the qui vive for flaws or it will stumble; and, absent the oil of common-sense construction, the new and untried machinery of the law will break down and its technical burdens prove its utter undoing. Many instances readily recur of the application of the doctrine of the sufficiency of substantial compliance as against very strict compliance."

The nomination paper in this instance actually contained the names and addresses of each signer.

The effect of the holding in this case is that the provision of primary election statutes (Section 10257, supra, is such) must be given a liberal construction and that substantial compliance is sufficient "unless vehement call is made (for strict compliance) by the act".

In Ex Parte Brown, 297 S.W., l.c. 447, it is stated:

> "When a fair interpretation of a statute which directs acts or proceedings to be done in a certain way shows that the Legislature intended a compliance with such provision

> to be essential to the validity of the act or proceeding, then such statute is mandatory."

Section 10257, supra, requires of candidates certain things. These are (1) Filing his written declaration at least sixty days before the primary, which declaration shall, (2) state his full name, (3) residence, (4) office for which he proposes as a candidate, (5) his party, (6) and that if elected, he will qualify.

There can be no doubt but that the first five of the above are absolutely essential. The purpose of said declaration is to enable the county clerk to correctly include the candidate's name and the office he is contending for on the proper party ballot. Without this information, the county clerk cannot intelligently prepare the ballot. Further, the statute provides that, "the name of no candidate shall be printed upon any official ballot", unless he comply with the statute.

Thus, we have the statute vehemently calling for said information and providing the result if it is not forthcoming, and must construe said statute, insofar as it pertains to these provisions, as mandatory and as calling for strict compliance.

The declaration before us is faulty in at least one particular in that it does not state the office for which the declarant desires to become a candidate. It merely states that he declares "himself to be a candidate for Justice of the Peace". The envelope containing said declaration attempts to supply the missing information, having thereon "Buffalo J.P.", thus indicating that declarant desires to become a candidate for Justice of the Peace of the Municipal Township of Buffalo.

Unless this saves the declaration, it is faulty on this ground alone, and declarant is not entitled to have his name printed on the official primary ballot.

In Hunter v. United States, 134 Fed. 361, 362, it is stated:

> "The Standard Dictionary defines 'envelope' as 'a case or wrapper, usually of paper, with gummed edges

> for sealing, in which a letter or like may be sent through the mail or inclosed for any purpose."

In United States v. Huggett, 40 Fed. 636, 640, it is stated:

> "'Envelope' might be conceded to mean the outside surface of a letter not enclosed in a jacket or like covering known as 'envelopes'."

The envelope covering this declaration, applying the above by analogy, is no part of the declaration, but is only the wrapper used to shield the contents from all except the addressee. The statute (Section 10257) contemplates that the information required of the candidate be given over his own signature. That which is on the envelope is not thus given and it can hardly be contended that if declarant had failed to sign his declaration, he would be entitled to have his name on the ballot. That which is on the envelope then is not over the declarant's signature and stands in the same position as the whole declaration would if unsigned.

Thus, for two cogent reasons, the envelope cannot be considered as part of the declaration to supply the necessary information.

Having reached this conclusion as to the sufficiency of the declaration itself, there is no need to consider the other questions involved. However, to avoid any confusion, we will say that the first question is to be answered in the affirmative. Carpenter v. Roth, 192 Mo. 658.

CONCLUSION

Therefore, it is the opinion of this department that the failure of a candidate for Justice of the Peace to state in his declaration the particular municipal township

in which he desires to become a candidate is fatal to his declaration, and the county clerk should not cause his name to be printed on the official primary ballot.

Respectfully submitted,

TYRE W. BURTON
Assistant Attorney General

APPROVED By:

J.E. TAYLOR
(Acting) Attorney General

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