

ELECTIONS: Vacancies occurring before primary must be filled after the primary election.

7-16

July 13, 1934.

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Mr. R. F. White  
Attorney at Law  
Eldon, Missouri

Dear Sir:

This Department is in receipt of your request for an opinion as to the following state of facts:

"Here, in Miller County, our candidate for County Clerk, has withdrawn, he being the only candidate for said office, leaves a vacancy in the Democrat Ticket, for the Primary Election. Now the question has arose, Can the county central committee fill the vacancy before the Primary or will it be necessary to wait until after the primary election and have such vacancy filled by the newly-elected committee.

Section 10268 R. S. 1929 does not seem to be clear on this particular point."

Section 10268, R. S. Mo. 1929, provides:

"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."

It will be noticed that this section provides for the filling of vacancies only after the primary elections. As to this point the Supreme Court of Missouri in the case of State ex inf. Barrett v. McClure, 299 Mo. 688 said (l. c. 694):

"It is further contended that under the terms of the statutes quoted a political committee could fill only a vacancy on the ticket nominated; that vacancies referred to do not mean vacancies in an office. Of course a political committee can fill only a vacancy occurring on the ticket nominated. \* \* \* \* \*

\* \* \* \* \*

"In State ex rel. v. Kortjohn, 246 Mo. l. c. 42, this court, in considering Section 4838, Revised Statutes 1919, said: 'This section is broad enough to permit the party committee of such party to fill any and all vacancies upon their party ticket.'

"These direct rulings by this court, and the attitude of the majority in the Roach Case, makes clear the accepted doctrine that a party committee has authority to fill any vacancy which happens to be upon the nominated ticket, no matter how or when that vacancy occurs, whether by the death or resignation of someone nominated or by the failure or inability of the electors at the primary to make a nomination."

In view of the foregoing, it is the opinion of this Department that by reason of Section 10268, R. S. Mo. 1929, it will be necessary to wait until after the primary election in August before the county central committee may legally fill the vacancy

Mr. R. P. White

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in the Democratic ticket for the office of County Clerk.

Respectfully submitted,

JOHN W. HOFFMAN, JR.,  
Assistant Attorney-General.

APPROVED:

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ROY McKITTRICK  
Attorney-General.

JWH:EG