

PRIMARY ELECTIONS: Candidate who has paid filing fee to Treasurer of Central Committee and filed timely declaration is entitled to have his name printed on the official ballot, but Treasurer of Central Committee should transfer fee to County Treasurer.

June 12, 1936. 6-12



Honorable H. Parker York,
Prosecuting Attorney,
Schuyler County,
Lancaster, Missouri.

Dear Sir:

This department is in receipt of your letter of June 10 wherein you present the following facts and request an opinion as to the same:

"My county clerk has asked me to write you relative to a situation which he would like to have your immediate opinion on before he acts. The situation is this: A man by the name of Fred George, desiring to run for sheriff of this county as an independent, paid the statutory filing fee of \$5.00 to the Treasurer of the Democratic Central Committee. The treasurer receipted him for the amount as follows:

'Received of Fred M.
George the sum of \$5.00
for filing fee for sheriff
on Independent ticket.

(Signed) Lois DeVinny
by F. J. DeVinny
Treasurer Schuyler County
Democratic Committee.'

"This receipt was in due time filed with the County Clerk and at the same time a declaration in due form was signed by George and filed with the County Clerk. This declaration designated George as

running on the independent ticket.

"The question is whether George has properly followed the law to qualify as an independent candidate and whether the Clerk is obligated to recognize him as such and have his name printed on the official ballot.

"In my opinion George did not properly qualify as an independent candidate by paying his filing fee to the Treasurer of the Democratic Committee. However, the County Clerk would appreciate your opinion on same as a protection to him."

We assume that Mr. George has attempted to comply with the terms of Section 10259, R.S. Mo. 1929, which is as follows:

"Any person desiring to file declaration papers, or propose as a candidate on any independent or nonpartisan ticket, who does not announce by declaration papers as a candidate for any political party as defined by this article, and is not a member of a political party having a state and county committee, or treasurer thereof, shall pay the sum of money required by this article to be paid by the candidate for the office for which he proposes to the state or county treasurer, as the case may be; take a receipt therefor, and file said receipt with his declaration papers; said sum of money so paid, shall go into the general revenue fund of the state or county."

We also assume that Mr. George's declaration was filed in conformity with the provisions of Section 10257, R.S. Mo. 1929, the pertinent part of which 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: * * * * "

Section 10258, R.S. Mo. 1929 relates to the deposit fee that each candidate must pay and designates the amounts for certain offices and to certain persons in each instance. It appears that Mr. George has complied with all the requirements of filing his declaration as an independent candidate, the one irregularity being that instead of paying the \$5.00 fee under Section 10259 to the "state or county treasurer as the case may be", he paid the same to the Treasurer of the Democratic Central Committee.

We think the provisions of Sec. 10257, supra, as to the declaration to be filed by a candidate are mandatory and must be followed strictly, but that the provisions of Sec. 10258 and 10259 are more or less directory and must only be complied with substantially. There is no decision directly in point on this question.

In the case of State ex rel. v. Roach, 258 Mo. 541, a question arose as to whether or not the declaration of a candidate desiring to run for judge of the Eighth Judicial Circuit in St. Louis should be filed with the Secretary of State or with the Board of Election Commissioners of the City of St. Louis. The court indicated that the matter was of slight importance and said (l.c. 550):

"It is manifest that so far as any good or evil may befall from our holding this ambiguity either way none such can happen. For it makes no difference utterly in the practical working out of the contemplated primary election scheme whether we hold that declarations of candidacy of those desirous of running for judges of the Eighth Judicial Circuit, shall be filed with the Secretary of State or with the Board of Election Commissioners of the City of St. Louis. At least there is but the difference, perhaps, of a postage stamp between the one place of filing and the other. The crying need is to settle it once for all and

fix thereby a rule of action, obviating that thick doubt, which we were told by counsel in argument, has heretofore impelled every candidate for judge of the circuit court of the city of St. Louis to file declarations both with the Secretary of State and in the office of the Election Commissioners, hoping thereby to find the right and proper place. Nevertheless, it ought to be settled by a logical and fair construction of the terms of the troubling statute and not by brutally forcing a balance."

CONCLUSION

Inasmuch as the independent candidate has filed a timely declaration, which you state is in legal form, and has paid the \$5.00 fee, it is our opinion that he is entitled to have his name printed upon the official ballot. He appears to have complied with all the requirements.

You state that the receipt for the \$5.00 fee was presented to the county clerk along with his declaration. The treasurer of the Democratic Central Committee should not have accepted the fee and the county clerk should have detected the error at the time the declaration was filed. We think the Treasurer of the Democratic Central Committee should transfer the \$5.00 fee to the County Treasurer, who in turn should issue the receipt and pay same into the General Revenue Fund of the county.

Respectfully submitted,

OLLIVER W. NOLEN,
Assistant Attorney General.

APPROVED:

JOHN W. HOFFMAN, Jr.,
(Acting) Attorney General.

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