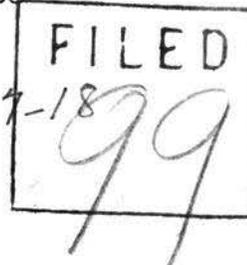


ELECTIONS: Board of Election Commissioners of City of St. Louis required to print on the official ballot the name of any candidate transmitted to them by the Secretary of State. Candidates have no right to make any change in their names given at the time of filing declaration after their names have been published as required by statute.

July 15, 1938

Board of Election Commissioners
For the City of St. Louis
208 S. 12th
St. Louis, Missouri



Gentlemen:

This will acknowledge receipt of your request for an opinion, reading as follows:

"The Board requests your opinion as to the following:

1. On the certified list of candidates received from the Secretary of State appears (a) James V. (Josh) Billings as Democratic candidate for nomination for Judge of the Supreme Court, Division No. One (Unexpired term of John Caskie Collet, resigned, ending 1944); (b) Dr. Charles H. Phillips, Jr., as Republican candidate for nomination for Representative in Congress for Missouri, Eleventh District. Shall the Board place these two names on the respective ballots exactly as they appear in the certificate of the Secretary of State?
2. Has the Board the right to make any change in the names given by candidates in their Declarations at the time of filing? To illustrate: (a) Lawrence J. Kickam who filed, as such, for Clerk of the Circuit Court for Criminal Causes for the Eighth Judicial Circuit, has requested that his name appear on the ballot - L. J. (Larry)

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Kickham; (b) Nicholas Blassie who filed, as such, for Justice of the Peace, has requested that his name appear on the ballot - Nicholas Martin Blassie; (c) Arthur Curry who filed, as such, for Constable, has requested that his name appear on the ballot - Arthur Lee Curry; (d) Geo. L. Vaughn who filed, as such, for Justice of the Peace, has requested that his name appear on the ballot - George L. Vaughn.

"The Board has fixed July 19, 1938, as the last day for withdrawals and the ballot must go to press on that date. May we hear from you promptly."

We invite your attention to a consideration of applicable statutes. We may make the observation that any person may become a candidate for any state office or for representative in Congress, if such person file his declaration of candidacy in the office of Secretary of State. Section 10260 R. S. Mo. 1929. We assume, however, that the person is qualified for the office for which he files. This declaration must, among other things, be filed sixty days before any primary and state the "full name" of the candidate. Section 10257 R. S. Mo. 1929. Fifty-five days before any primary the duty is imposed upon the Secretary of State to transmit to the respective county clerks a certified list containing the names and addresses of all persons entitled to be voted for at the primary. Section 10261 R. S. Mo. 1929. Thereafter the county clerks are required to publish the lists thus transmitted. This particular Section 10262 R. S. Mo. 1929, reads 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 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 Section 10264 R. S. Mo. 1929, "the names of all the candidates for the respective offices, who shall have filed declaration papers * * * shall be printed thereon".

Section 10265 R. S. Mo. 1929 provides, in part, as follows:

"At least twenty days before the August primary in any year, * * * each county clerk shall prepare sample official ballots * * *. 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 * * *."

We make the observation that any duty required of or power given to any county clerks, with respect to primary elections in the City of St. Louis, shall be performed by or vested in the Board of Election Commissioners. Section 10290 R. S. Mo. 1929.

It shall be noticed from the statutes above considered that the word "shall" has been used numerous times with respect to certain duties being performed by county clerks. It is believed that the frequent use of the word "shall", in the manner in which the word is used, indicates to us that these statutes are mandatory in character and must be obeyed. This construction is fortified by a consideration of Section 10291 R. S. Mo. 1929 relating to the penalty imposed upon any person for violating any of the provisions or requirements of the article from which the statutes above noticed are a part. As was said in the case of Ousley vs. Powell, 12 S. W. (2nd) 102:

"When a statute provides what results shall follow the failure to comply with its terms, it is mandatory and must be obeyed." (Italics ours)

We further observe, as was said in the case ex rel. Stevens vs. Wurdeman, 295 Mo. 566 - 568, that:

"Usually the use of the word 'shall' indicates a mandate, and unless there are other things in a statute it indicates a mandatory statute".

From these considerations of the statutes, which we believe to be mandatory in character, the Board of Election Commissioners has no alternative other than to print on the official primary ballot the name of all persons transmitted to them, which names of candidates and their addresses are to be published three consecutive weeks next prior to any primary election.

We further make the observation that the duties imposed on the county clerks or Board of Election Commissioners is ministerial and involves no exercise of discretion.

(a) In view of the above, it is our opinion that the name JAMES V. (JOSH) BILLINGS must be printed by the Board of Election Commissioners on the official ballot as was transmitted to the Board of Election Commissioners from the Secretary of State.

(b) In view of the above, it is our opinion that the name DR. CHARLES H. PHILLIPS, JR., is to be printed by the Board of Election Commissioners on the official primary ballot, as transmitted from the Secretary of State.

II.

Further consideration of Section 10257 indicates that when a person has filed his written declaration to be a candidate and has stated his full name in such declaration, he warrants that this is his full name, and that thereafter such person declaring himself to be a candidate has no right to change his name from that of the name appearing in the declaration. This observation is fortified by a consideration of the statutes before noticed, Sections 10261 and 10262, supra, with respect to the publication of the persons' names who have filed for certain offices. It is fundamental in the construction of the statutes that the object and purpose underlying their enactment is to be considered in determining the legislative intent. *State vs. Toombs* 25 S. W. (2nd) 101; *Bowers vs. Missouri Mutual Association* 62 S. W. (2nd) 1058. With this principle in mind, it is believed that the very object and purpose of Section 10262 with respect to the publication of the names and addresses of all persons who have filed declaration papers giving the name and address of each, the date of the primary, the hours during which the polls will be open, etc., for a period of three consecutive weeks next prior to the primary is to acquaint the electors in the respective election districts of not only the primary, but the names of all persons who have filed as a candidate for particular offices. If a person has filed his declaration as a candidate for a particular office, under a particular name, and thereafter attempts to change such name prior to the printing of the official ballot it would seem to render nugatory the provisions of the statutes before considered.

Board of Election Com.

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In view of the above, it is the opinion of this department that the Board of Election Commissioners has no right to make any change in the names given by candidates in their declarations at the time of the filing after such names are published.

Very truly yours,

RUSSELL C. STONE
Assistant Attorney General

APPROVED:

ROY McKITTRICK
Attorney General

RCS:LB