

ELECTIONS: Central committee of political party can only fill vacancies on a ticket after the primary when nominated candidates die or resign.

April 13, 1942

4-16

Honorable H. Parker York  
Prosecuting Attorney  
Lancaster, Missouri



Dear Sir:

This will acknowledge receipt of your letter of the 7th which reads as follows:

"The County Clerk of Schuyler County has requested my opinion relative to the present meaning and intent of sections 11538, 11539 and 11562 as amended and reenacted by the Legislature in 1941. In particular he wishes to know whether under these new sections the Central Committee of a political party who had no candidates in the primary can, after the time has passed for the holding of a primary and before the general election, make up a ticket or a part of a ticket and submit such names to him to be carried on the ballot in the general election. I refer to candidates for county office, of course. Also what would the effect of these amended sections be if such political party had had at least one candidate for some office running in the primary and then after such primary had submitted to the county clerk through its central committee enough names to fill its ticket for the general election? What significance, if any, should be placed on the fact that in the first proviso of section 11538 as reenacted in 1941 the words, 'and not otherwise' were added in place of the words 'or otherwise' which words were

referring to the manner in which vacancies existing on the ticket could be filled by the central committee? I call your attention also to the omission of the words, 'or where no person shall offer himself as a candidate before such primary' from the amended version of section 11562 (Laws of 1941, p. 354) and the adding of the words, 'and resulting from the death or resignation, and not otherwise, of the nominee of a party at such primary,' and request your opinion as to the meaning of this amended section."

The right of political parties to nominate candidates for public office is a privilege granted and controlled by the Legislature. In 29 C. J. S., p. 123, Sec. 89, it is said:

"In the absence of constitutional or statutory provisions to the contrary, a political party has the right to nominate its own candidates for office and the determination of who shall represent it as its nominees is controlled by the action of the party itself. Nomination of candidates for public office by political parties is, however, a political privilege depending on the will of the people as expressed through the legislature, or, in the absence of statute, on the will of party adherence, expressed through conventions, caucuses, or otherwise, in accordance with rules and regulations of such parties, and is not an absolute or constitutional right, or, as otherwise stated, the right to nominate candidates for civil office is not a contract right guaranteed by constitution but rather a private privilege granted by the legislature under its general power to regulate elections."

To answer your question, therefore, we must see what rights have been granted by the Legislature to political parties to supply names of candidates on a ticket when a vacancy occurs in such nominated ticket.

Article 4, Chapter 76, R. S. Mo. 1939, provides how nominations shall be made. Section 11525 reads as follows:

"Any primary election as herein-after defined, held for the purpose of making nominations to public office, and also electors to the number hereinafter specified, may nominate candidates for public offices to be filled by election within the state. Such nomination shall be made by filing a certificate of nomination, executed with the formalities prescribed for the execution of an instrument affecting real estate."

Sections 11526 and 11527 of said article provide what the certificates of nomination shall contain and where they shall be filed. Section 11533 of said article reads as follows:

"The certificate of nomination of a candidate for office, selected by any primary election as herein defined, shall be signed, and executed by the presiding officer and secretary of the political committee under whose direction it is held: Provided, that in case of the death or inability of the presiding officer or secretary of said political committee to perform the duties herein required, the surviving qualified officer thereof shall sign and execute the certificate of nomination, which shall be accepted as if executed by both said officers."

The foregoing sections provide a method by which political parties may make nominations of candidates for public office. The names thus nominated would constitute

the ticket of the political party making such nominations to be voted on at the general election.

Section 11538, page 354, Laws of Missouri, 1941, after providing when certificates of nominations shall be filed, provides, among other things, as follows:

"Provided, that in case of any vacancy in said nomination, by resignation or death and not otherwise, the central committee, or a convention called for that purpose, of the party on whose ticket such vacancy may occur, may select and certify to the secretary of state, county clerk or board of election commissioners the name or names of candidates to fill such vacancy; "

The foregoing section clearly provides that only vacancies in nominations which result from the resignation or death of a nominated candidate can be filled by the central committee of the political party. It is interesting to note that Section 11538, R. S. Mo. 1939, provided that such political committee could fill vacancies in nominations caused by "resignation, death or otherwise." In the new section enacted in lieu of the one containing the latter provision, the words "or otherwise" are omitted and in lieu thereof the following words are inserted, "and not otherwise."

Furthermore, Section 11539, page 355, Laws of Missouri, 1941, provides for a central committee of a political party and invests that committee with power to fill vacancies in nominations in the following language:

"\* \* \* That for the purpose of making nominations to fill vacancies resulting from death or resignation and not otherwise, on a ticket previously nominated a majority of all the members-elect of a central committee shall be necessary to take action. \* \* \*"

It should be noted also that the part of Section 11539, as it appears in R. S. Mo. 1939, which corresponds

to the foregoing quotation, reads as follows:

"\* \* That for the purpose of making nominations to fill vacancies on a ticket previously nominated a majority of all the members-elect of a central committee shall be necessary to take action. \* \* \*"

It will be noted that in the old section the committee was given the power to fill vacancies on a ticket without any limitation as to how such vacancies occurred. The new section passed by the Legislature in 1941 limits the vacancies which can be filled by the central committee of a political party. The new section clearly shows a deliberate intent on the part of the Legislature to limit the situations in which a political committee can fill vacancies in nominations. Likewise, the same Legislature (1941) repealed Section 11562, R. S. Mo. 1939, and enacted a new section in lieu thereof. The old section (11562) read as follows:

"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."

The new section enacted in lieu of the foregoing section (page 353, Laws 1941) reads as follows:

"Vacancies occurring after the holding of any primary and resulting from the death or resignation, and not otherwise, of the nominee of a party at 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."

We do not see how language could be any clearer in limiting the conditions under which a political committee can fill a vacancy in nominations. There are just two situations when such committee can thus function. One is where there is a vacancy in the nominated ticket by death of candidate already nominated and the other is where there has been a resignation of a nominated candidate. It must follow therefore that when a political party had no candidates in the primary, there could be no vacancy in its ticket, after the primary, which arose by reason of the death or resignation of a nominated candidate. Whether the political party had no candidates at all in the primary or whether it had candidates for only part of the offices would make no difference. In either event, the central committee could not, after the primary, supply a name on the ticket of its party unless someone had been nominated for an office and had either died or resigned after the primary.

#### Conclusion

It is, therefore, the opinion of this office that the central committee of a political party which had no candidates in the primary could not, after the primary, make up a ticket or part of a ticket by supplying the names of candidates for offices to be voted on at the general election. Likewise, where a political party had some candidates in the primary but did not have candidates for each office, the central committee could not supply names of candidates for the offices for which there were no candidates in the primary.

Yours very truly

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Assistant Attorney-General

APPROVED:

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ROY MCKITTRICK  
Attorney-General