

ELECTIONS: Declarations of candidacy may be filed with county clerk by mail or by a person other than the candidate himself. Receipt of payment to county central committee should be filed therewith.

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FILED 18

Honorable Joe W. Collins
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Dear Sir:

We hereby acknowledge receipt of your request for an opinion, which reads as follows:

"I am writing for an opinion as to what is a sufficient filing of a declaration of candidate under Section 11550 of Supplement to Missouri Laws of 1943.

"Our county clerk has received one declaration through the mails shown signed but with no declarations or instructions to him to file the declaration. Should he file this declaration since it is in proper form and duly signed, even though there are no instructions to him to file it except that he has received the declaration signed through the mails.

"Other declarations by candidates have been brought in to his office by others than the candidate whose name is signed on the declarations, and the party who brings these in says that the party who signed them wished the declaration filed.

"I would be glad to have an opinion as to whether these declarations are properly filed within the meaning of the law."

Section 11550, Laws of Missouri, 1944, Ex. Sess., p. 24, Sec. 1, referred to in your request, provides as follows:

"The name of no candidate shall be printed upon any official ballot at any primary election, unless such candidate has on or before the last Tuesday of April preceding such primary filed a written declaration, 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:

"I, the undersigned, a resident and qualified elector of the (..... precinct of the town of), or (theprecinct of the ward of the city of), or the precinct of township of the county of and State of Missouri, do announce myself a candidate for the office of on the ticket, to be voted for at the primary election to be held on the first Tuesday in August,, and I further declare that if nominated and elected to such office I will qualify.

....."

There is no provision in this section which would require one who is filing such declaration to supplement it by any extrinsic declaration of intention. The declaration provided for in Section 11550, supra, is in itself the expression of such intention without further explanation.

In connection therewith, however, Section 11551, R. S. Mo. 1939, provides:

"Each candidate, except for a township office, previous to filing declaration

papers, as in this article prescribed, shall pay to the treasurer of the state or county central committee of the political party upon whose ticket he proposes as a candidate and seeks nomination, a certain sum of money, as follows, to-wit: To the treasurer of the state central committee--one hundred dollars, if he becomes a candidate for a state office, or judge of either of the courts of appeals; fifty dollars, if he be a candidate for representative in congress; twenty-five dollars, if he be a candidate for circuit judge or state senator. To the treasurer of the county central committee--five dollars, if he be a candidate for state representative or any county office; take a receipt therefor, and file such receipt with and at the time he files his declaration papers. The said sums of money, so paid by the several candidates, shall be evidence of their good faith in filing said declaration papers, and shall be used as an expense fund by the several political parties upon whose tickets the various candidates propose as candidates and seek nomination; and such sums of money, so paid, shall be excepted from the terms and provisions of article 15 of this chapter. (Underscoring ours.)

The payment of this money is, as stated in this section, "evidence of their good faith in filing said declaration papers." In turn, the receipt for such payment is to be filed with the declaration papers, which gives the county clerk notice of such good faith.

The method by which such declaration shall be filed is not covered by statute. We find no provision which requires a candidate to file his declaration in person and are of the notion that such restriction is not the intent of Section 11550.

Many declarations have been filed by mail. Such was the situation in the case of State ex rel. Huse v. Haden, 163 S. W. (2d) 964. Although the precise question as to whether or

not such method of filing was proper did not directly confront the court, it was a fact in that case that a certificate of declaration had been so filed. The court did not question the propriety of this fact and accepted it as a matter of course. In the event it were improper, the court would, no doubt, have questioned it. It appears to us, therefore, that this is an accepted method of filing a declaration of candidacy.

As for the situation whereby a declaration is filed by a person other than the candidate himself, we quote from the case of Hewlett v. Carter, 239 S. W. 789, 1. c. 790, 194 Ky. 454, wherein it is stated:

"It is first insisted, under the grounds relied on in the original petition, that, if the certificate of nomination of the defendant Boggs was regular and possessed no inherent defect, it should have been filed by him in person and not by his attorney or agent, but we are cited to no case from any court so holding. There is nothing in our statutes remotely pointing to such a requirement, and we can discern no logical reason for it. On the contrary, we know, from observation and experience, that the practice of procuring a representative to file such certificates for and on behalf of the candidate has quite universally prevailed throughout this state, since the enactment of the Primary Election Law."

Such has been the practice in the State of Missouri, and in the absence of a provision to the contrary we are of the notion that this is not an improper practice.

It is the duty of the county clerk to file such declarations of candidacy as are presented to him. With regard to this duty we quote from the case of State ex rel. Fisler v. Glass, 192 P. 472, 1. c. 474, 44 Nev. 235, wherein it is stated:

"In the recent case of Security Savings & Loan Ass'n v. Brodigan, as Secretary of State, 192 Pac. 263 (not yet officially reported), we had occasion to say that it requires no elaboration of law or of the authorities to sustain the contention that ministerial officers have no jurisdiction to pass upon the validity of instruments presented to them for filing. Ministerial officers are by the law required to receive and file such instruments as are duly executed, provided such instruments purported upon their face to be of the nature of instruments entitled to be filed or recorded, as the case may be. Such officer has the right to exercise discretion as to matters of form, but not to exercise judicial discretion.

"In this instance the respondent Glass had no more right as a ministerial officer to decline to accept and file the certificate in question, because it failed to contain the places of residence of its signers, than he had the right to reject the certificate, because the signatures thereon were forged, or that the persons represented thereby were not qualified electors, or that their places of residence were false or fictitious. It would not do to say that a recorder of deeds could refuse to accept for filing a conveyance because it did not appear upon its face to be a legal instrument, or that the county clerk, as ex officio clerk of the court, could properly refuse to file a confessed judgment without legal requirements. So with a certificate of nomination. The county clerk under the statute has nothing whatsoever to do with its contents that admittedly go to the substance and validity of the certificate. The county clerk is not the guardian of the public's rights before or after election.

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Neither is he concerned with the grievance of any elector who complains because a certificate upon its face does not contain, in the judgment of said elector, the requirements to be stated therein by law. We do not think that the Legislature intended to vest in a mere ministerial officer such important power as to pass upon the validity of a nomination certificate before accepting and filing it."

This same rule is found in the case of State v. Boyer, 271 P. 46, 127 Ore. 91.

Conclusion

It is, therefore, the opinion of this department that a declaration of candidacy as provided by Section 11550, Laws of Missouri, 1944, Ex Sess., p. 24, may be filed with the county clerk by mail or by a person other than the candidate himself when it is in the proper form and duly signed.

It is our further opinion that the receipt for payment to the county central committee of a political party upon whose ticket he purposes to run as a candidate, should be filed with his declaration papers to show good faith on his part in filing.

Respectfully submitted,

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APPROVED:

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