

Answer by letter, Blackmar, A.

October 1, 1970

OPINION LETTER NO. 512

Honorable Allen S. Parish
Prosecuting Attorney
Saline County Court House
Marshall, Missouri 65340



Dear Mr. Parish:

This letter is in response to your request for an opinion where you ask the following:

"Candidate A is candidate for the office of Prosecuting Attorney. Candidate B was a Candidate for Probate Judge. Candidate B died on September 16, 1970. Both Candidates were running unopposed. May Candidate A, who has not withdrawn from the Prosecutor's race in accordance with Section 120.375, RSMo 1969, now be considered for, and nominated as, Probate Judge? If so, whose name should appear on the ballot as candidate for Prosecuting Attorney?"

Section 120.550, RSMo 1969, provides the procedure to be followed when a candidate dies after the primary but prior to the election. The portions of that statute relevant to your inquiry are as follows:

- "1. The party committee of the county, . . . shall have authority to make nominations . . .
- "(2) When any person nominated as the party candidate for any office shall die or resign before election;"

Honorable Allen S. Parish

Under that section, no declaration of candidacy by the individual nominated is necessary.

Section 120.370, RSMo 1969, provides that, "[n]o person shall file a written declaration of candidacy for more than one office to be filled at the next general election," Inasmuch as Candidate A, if he were nominated by the county committee as a candidate for probate judge, would not personally file a declaration of candidacy for that office, he would not come within the prohibition of Section 120.370, RSMo 1969. Therefore, we find no reason why Candidate A may not be nominated as his party's candidate for probate judge.

Your second question is, ". . . whose name should appear on the ballot as candidate for Prosecuting Attorney?". Here it appears that Section 120.375, RSMo 1969, provides the exclusive method by which a candidate may withdraw. That section reads:

"1. Any person who has filed a declaration of candidacy or any person nominated in the August primary election by his party as a candidate for an elective office, who wishes to withdraw as a candidate, must do so by filing a written, sworn statement of withdrawal in the office in which his original declaration of candidacy was filed not later than forty-five days prior to the day of the primary or general election, as the case may be.

"2. The name of a person who has properly filed a declaration of candidacy, or of a person nominated by his party for office, who has not given notice of withdrawal as provided in subsection 1, shall, except in case of death, be printed on the official primary or general election ballot, as the case may be."

Inasmuch as the time deadline has passed for withdrawal, Candidate A may not cause his name to be removed as candidate for prosecuting attorney. Therefore, if Candidate A is nominated for probate judge by the party committee, his name will appear on the ballot as a candidate for both the office of probate judge and prosecuting attorney.

Yours very truly,

JOHN C. DANFORTH
Attorney General