

ELECTIONS:  
PRIMARY:

It is not necessary to print names of minor party candidates on primary election poll books, tally books and other supplies: Minor parties having failed to cast more than 5% of votes at last election for Governor.

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June 20, 1942

Hon. Dwight M. Brown  
Secretary of State  
State of Missouri  
Jefferson City, Missouri

6-20  
**FILED**

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File No. M-13a

Dear Mr. Brown:

This is to acknowledge receipt of your letter of June 17, 1942, containing an opinion request which is as follows:

"In the past it has not been the practice for this Department to certify candidates of minor parties to the County Clerks and Boards of Election Commissioners, 55 days before the primary, in accordance with Sec. 11554 R. S. Mo., 1939.

"In view of the amendments to the election laws passed at the 1941 session of the General Assembly, prohibiting party committees from filling vacancies except where such vacancies are caused by death or resignation, I certified four minor party candidates to the County Clerks and Boards of Election Commissioners on June 8th, copy attached.

"Letter from Duxton & Skinner of St. Louis inquires:

'Our understanding is that, under Section 11531, neither of these parties (Socialist, and Prohibition) will be on the primary ballot, and in that case no provision need be made for these parties in the poll books, tally books, and other supplies for the primary election and we are proceeding on that basis. If

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we are in error, will you please telegraph us or call the writer (R. M. Kendrick) on the telephone, on receipt of this letter.'

"Neither the Socialist nor the Prohibition party cast as much as 5% of the votes in last election. It is my understanding that these parties are not to appear on primary ballot unless more than one candidates files for an office in such party. Only one candidate has filed for state offices which file in this office, but I do not know whether more than one candidate of such parties has filed for offices which file in the local County Clerk's office or Board of Election Commissioners.

"May I be favored with your opinion as to necessity of including these minor parties on primary election poll books, tally books and other supplies?"

We also acknowledge receipt of a copy of the certification of files by candidates, which on page eight (8) contains the following:

"SOCIALIST CANDIDATES FOR NOMINATION

For State Superintendent of Public Schools:

Doris Bausch Preisler, 3420 Longfellow  
Blvd., St. Louis.

For Representative in Congress:

5th District: W. F. Rinck, 5514 Brook-  
lyn, Kansas City.

PROHIBITION OF CANDIDATES FOR NOMINATION

For Representative in Congress:

9th District: Elmer E. Morrow, Box 384,  
Troy.

For State Senator:

10th District: C. E. Cowen, 911 W. Ash,  
Columbia."

Section 11561, R. S. Mo., 1939, provides that ballots shall not be printed for nomination upon the party ticket where, in the last preceding election, the party failed to cast as much as five percent (5%) of the total vote cast for Governor and when there is not more than one person filed as a candidate for any office on said ticket and where a petition signed by at least ten percent (10%) of the voters voting in the county have<sup>10/10</sup> filed a petition asking for a ballot. That section is as follows:

"Whenever any person shall have filed as a candidate for nomination upon a party ticket which, at the last preceding election for Governor, shall have cast less than 5 per cent of the total vote cast for Governor in such election, and when not more than one person shall have filed as a candidate for any office on such party ticket, no ballot shall be printed for the primary election as herein provided unless upon petition of at least 10 per cent of the voters voting in the county at said preceding election for Governor. When no ballots are printed as hereinbefore provided, the candidates filing declarations and who are unopposed shall be certified, as by this chapter provided, as the nominees of such party casting less

than 5 per cent of the vote of the state."

According to the official returns in the last election for Governor, the total vote was 1,821,207. Of this amount the Socialist Party cast 1,555, being a percent of just a little less than 1%. The Prohibition Party did not have a candidate. According to the certification set out above there is not more than one candidate for any office of either of these parties. Further, there is no showing that a petition has been ~~submitted~~ by more than ten percent (10%) of the voters in the last gubernatorial election. Hence, it can be seen that the candidates of the Socialist and Prohibition Parties are not entitled to have a printed ballot at the primary election.

It then becomes a question of whether or not these minor parties should be included on the primary election poll books, tally books and other supplies. Section 11535, R. S. Mo., 1939, provides that the challenger at an election shall have the duty of challenging any person who attempts to vote a ticket of a party of which he is not affiliated. That section is as follows:

"It shall be the duty of the challenger to challenge and the duty of the judges of election to reject the ballot of any person attempting to vote other than the ticket of the party with which he is known to be affiliated, unless such person, when challenged, obligates himself, by oath or affirmation, administered by one of the judges, to support the party nominees of the ticket he is voting in the following general election. All judges of the election shall have authority and are empowered to administer such oath, or affirmation, and any person offering to vote who shall fail or refuse to take or make such oath or affirmation when demanded by such challenger, or required by any judge, shall not be

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allowed to vote at such primary election."

CONCLUSION

It is, therefore, the opinion of this office that, inasmuch as the Prohibition and Socialist Parties are not entitled to a printed ballot in the primary election; that candidates certified are automatically nominated as the nominees on their respective tickets; that there is no provision made for the placing of such party names on the poll books, tally books and other supplies; with the further provision that a challenger would have the right to challenge any person who is known to be affiliated with another party:- it follows that that person would have to swear to be either a Democrat or a Republican or there would be no necessity for his voting. In view of the above, we believe there is no necessity for the printing of the names of the Socialist and Prohibition Parties on the poll books, tally books and other supplies for the primary election.

Respectfully submitted,

LAWRENCE L. BRADLEY  
Assistant Attorney-General

APPROVED:

ROY McKITTRICK  
Attorney-General

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