ELECTIONS: Candidate's receipt alone is not sufficient for placing name on the ballot.

July 20, 1942

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Hon. Robert I. Meagher
Prosecuting Attorney
Madison County
Fredericktown, Missouri

Dear Sir:

We are in receipt of your request for an opinion, under date of July 17, 1942, which reads as follows:

> "Enclosed please find letter from Frank Wray County Clerk of Madison County, Missouri, certified copies of candidate's declarations, and sample ballots. Both Mr. Wray and I are anxious to obtain a ruling from your department as to what correction if any may be necessary to be made before the ballots are printed. Under section 11558 R. S. of Mo. for year 1939 I note the corrections must be made and the ballots printed on or before 10 days before the primary election, therefore, we urge you to let us have a decision at an early date.
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> "The question boils down to this: Is the filing of a receipt as was done in the case of Sam J. Toler sufficient declaration of a candidate and where a candidate files a declaration for Associate Judge of County Court in the Second District can he legally be placed on the ballot in the First District, as was done in the case of Robert Barron?

We understand your request to be under the following facts:

First: That Robert Barron, according to the attached certified copy of a receipt signed by the Treasurer of the Democratic Committee of Madison County, Missouri, dated June 5, 1942, and a certified candidate's declaration, filed on June 5th, 1942, made a candidate's declaration for the office of the Associate Judge of the County Court, Second District, when, in truth and in fact, and according to the candidate's declaration, he was a resident and qualified elector of the First District; and

Second: Attached to your request is the certified copy of a filing fee receipt, showing fee paid by Sam J. Toler, to the Treasurer of the Madison County Republican Committee. We see no candidate's declaration of Sam J. Toler, attached to this receipt.

Section 2474 R. S. Missouri, 1939, reads as follows:

> "The county court shall be composed of three members, to be styled judges of the county court, of whom the probate judge may be one, and each county shall be districted by the county court thereof into two districts, of contiguous territory, as near equal in population as practicable, without dividing municipal townships."

Section 2475 R. S. Missouri, 1939, partially reads as follows:

> "At the general election in the year eighteen hundred and eighty, and every two years thereafter, the qualified voters of each of said districts shall elect a county court judge, who shall hold his office for a term of two years and until his successor is duly elected and qualified; * * * "

Section 11550 R. S. Missouri, 1939, reads as follows:

> "The name of no candidate shall be printed upon any official ballot at any primary election, unless at least sixty days prior to such primary a written declaration shall have been filed by the candidate, 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:
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> "I, the undersigned, a resident and qualified elector of the (____ precinct of the town of _____), or (the _____precinct of the _____ ward of the city of ____), 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.
>
> "(Signed) _____."
>
> (Underscoring ours.)

It will be noticed that under the above section, it is specifically provided that "the name of no candidate shall be printed upon any official ballot at any primary election, unless at least sixty days prior to such primary a written declaration shall have been filed by the candidate, as provided in this article, * * * ." There is no question but that it is mandatory that a written declaration must be filed.

Since Section 11550, supra, specifically sets out conditions under which the name of the candidate shall be printed on the official ballot, and specifically states that no name shall be printed unless a certain procedure is followed, this section should be considered as mandatory. A mandatory statute is one where the omission to follow the procedure renders the proceeding to be illegal and void. (State ex rel Ellis v. Brown, 33 S. W. (2d) 104, 326 Mo. 627)

It is presumed that the legislature intended every part and section of a statute or law to have effect and to be operative, and did not intend any part of section of a statute to be without meaning or effect. (Graves v. Little Tarkio Drainage District, Number One, 134 S. W. (2d) 70, 345 Mo. 557.)

Section 11550, supra, specifically sets out that he must state in his declaration: "office for which he proposes as a candidate."

Under the facts in your request he has declared himself to be a candidate as Associate Judge of the County Court, in the second district, and that is the only office for which he can be a candidate under his declaration.

Under Section 3475, supra, it is not provided that the Associate Judge be a resident of either of the two districts therein set out, and it is our opinion that any resident of the State, who is a qualified voter can be elected as the Associate Judge of any district in any county in this State.

In your request you mentioned Section 11558 R. S. Missouri, 1939, which refers to the correction of the sample ballot. In other words, it authorizes the county clerk on or before the 10th day before the holding of any primary election to correct any errors or omissions in the ballots. This section does not apply to errors made in a candidates declaration.

CONCLUSION

In view of the above authorities, it is the opinion of this department that the name of Robert Barron cannot be placed upon the Democratic ballot for the primary election of August 4, 1942, as a candidate for Associate Judge in the first District, but must be placed upon said primary ballot as an Associate Judge for the second district.

It is further the opinion of this department that the name of Sam J. Toler, cannot be placed upon the Republican ballot for the primary election of August 4, 1942, for the reason that he has not complied with the mandatory Section, 11550 R. S. Missouri, 1939, which specifically prohibits the clerk from placing, upon the ballot, the name of any candidate who has not filed the candidate's declaration set out in said section.

Respectfully submitted

APPROVED:

W. J. BURKE
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(Acting) Attorney General

WJB:RW