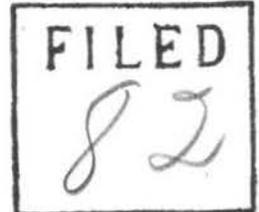


ELECTIONS:
NOMINATIONS BY PETITION:

Statute providing for nominations
by certificates is not repealed by
act of 1941.

October 7, 1942

Hon. William E. Shirley
Prosecuting Attorney
Kirksville, Missouri



Dear Mr. Shirley:

This is in reply to your letter of recent date wherein you request an opinion from this department on the question of whether or not Section 11534, R. S. 1939 is in effect.

Said Section 11534, pertaining to nominations by certificate, provides as follows:

"The certificate of nomination of a candidate selected otherwise than by a primary shall be signed by electors resident within the district or political division for which the candidate is presented, to a number equal to two per cent of the entire vote cast at the last preceding election in the state, the county or other division or district for which the nomination is made: Provided, that said signers shall declare in said certificate that they are bona fide supporters of the candidate sought to be nominated and have not aided and will not aid in the nomination of any other candidate for the same office."

Nominations by conventions or primary and by certificates was provided for by Sec. 2, Laws of 1889, p. 105. Under that article there were three sources of nominations; (1) a convention of delegates; (2) a primary election, and (3) a petition by electors.

In 1907 (Laws of 1907, p. 263) an act was passed which did away with nominations by conventions, but it did not disturb the law of 1889 providing for nomination by certificates.

In State ex rel. v. Kortjohn, 246 Mo. 34, l. c. 39, the court, in construing the primary act of 1907, said:

"A careful reading of the act of 1907 shows that the legislative mind was bent upon the method of nominations by political parties and had no thought of disturbing the Act of 1889 so far as it related to nominations by electors, which portion of the Act of 1889 we had, in Atkeson v. Lay, so construed as to make it the avenue for the formation of new political organizations, as well as the avenue for independent, non-partisan nominations. Indeed, the very title of the Act of 1907 would indicate that there was no legislative intent to disturb that portion of the Act of 1889 relating to nominations by electors. * * * * *

"In other words, this Act of 1909 does not attempt to deal with the subject of nominations made by electors, and is therefore not inconsistent with that portion of the Act of 1889, and of course, does not repeal that portion of such act. To my mind both the Act of 1907 and the Act of 1909 were only intended to eliminate from the Act of 1889 that portion which authorized a party nomination by a convention of delegates. * * * * *

The Act of 1941 referred to in your letter contains the following title:

"An Act repealing Sections 11538 and 11539 of Article 4, of Chapter 76, of the Revised Statutes of Missouri for the year 1939 relative to the filing of certificates

October 7, 1942

of nomination, filling of vacancies and correction of tickets where vacancies are filled and enacting two new sections in lieu thereof to be known as Sections 11538 and 11539 relative to the same subject matter."

It will be noted that this title and act refers to only two sections to be repealed, viz. 11538 and 11539.

These sections as reenacted by the 1941 Act refer to filing certificates of nomination and to the filling of vacancies on the nominated ticket. They do not apply to the nomination of independent candidates by the certificates of nomination mentioned in Section 11534, R. S. 1939. If said Section 11534 were effected or repealed by the 1941 Act, supra, it would be by implication. Repeals by implication are not favored. *Manrizi v. Western Coal and Mining Co.*, 11 S. W. (2d) 268. The Act of 1941 must be so plainly inconsistent with Section 11534 that they cannot stand together, before the latter Act can repeal said Section 11534. *State ex rel Boyd v. Rutledge*, 13 S. W. (2d) 1061.

CONCLUSION

From the foregoing, it is the opinion of this department that the Act of July 31, 1941, Laws of Missouri 1941, p. 354, does not affect the provisions of Section 11534 and that a person may still be placed on the ballot by the certificate, provided for by said Section 11534.

Respectfully submitted,

TYRE W. BURTON
Assistant Attorney General

APPROVED:

ROY McKITTRICK
Attorney General

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