

ELECTIONS: A person is entitled to the whole of the last day allowed by law to file for office, and it is the duty of the county clerk, or deputy, to be available all of this day.

May 18, 1946



Mr. Leo Mitchener
Clerk of the County Court
Ripley County
Doniphan, Missouri

Dear Sir:

We acknowledge receipt of your letter of May 9th, 1946, requesting an opinion of this department, which is as follows:

"On Tuesday April 30th, I was in, and kept my office open until a few minutes past the usual closing time, after which I was out of town. Later a man desiring to file for county office went to my residence, having his receipt for filing fee properly signed by Treasurer of Central Committee. Although my wife was at home, he did not leave his declaration and receipt for filing fee at my residence, but later (presumably prior to 12 o'clock midnight) mailed his declaration to me, but it was postmarked 9:30 A.M. May 1st.

"I desire an opinion from you on the following questions:

"(1) Am I required to keep the office open or to be on call after the usual closing time?

"(2) Is the above mentioned candidate legally filed and can I legally place his name on the ballot?

"An opinion at your earliest convenience will be appreciated."

Mr. Leo Mitchener

(2)

The question presented is whether, under the facts as outlined by your letter, the man seeking to file for a county office has complied with Section 11550, Laws of 1944, Extra Session, page 25, Par. 1, and Section 11553, R. S. Mo. 1939, and is entitled to have his name printed on the official ballot for the August 6th primary election of 1946.

Section 11550, Laws of 1944, Extra Session, page 25, provides:

"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 (the precinct 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."

Section 11553, R. S. Mo. 1939, provides:

"No person shall file more than one written declaration indicating the party designation under which his name is to be printed on the official ballot, and all declaration papers shall be filed as follows:

"1. For state officers, representatives in congress, courts of appeals and circuit judges, and those members of the senate and assembly whose districts comprise more than one county, in the office of the secretary of state.

"2. For officers to be voted for wholly within one county or in the city of St. Louis, in the office of the county clerk of such county or the office of the election commissioners of the city of St. Louis."

The case of State ex rel. Haller v. Arnold, 277 Mo. 474, 210 S.W. 374, established the doctrine that a person is entitled to the whole of the last day allowed by law to file his declaration for office. In this case the official who was required by law to accept and receive the filing fee was absent from his office, and the person attempting to pay said fee was unable to find him about the city. The next day the official was in his office, the filing fee was paid, but the Board of Election Commissioners refused to place the man's name on the official ballot. The court held that he was entitled to have his name placed on the ballot and, in so holding, said, l. c. 481, 482:

"It is manifest that any eligible candidate for office is entitled to the whole of the last day allowed by law within which to submit himself to the electors for their suffrages. In a case like this, where the proposed candidate is in no wise at fault (the argument that he should have made up his mind earlier obviously having no weight, by reason of the truth of the premise last above) ought he to be deprived of the privilege of running for a public office by the mere adventitious fact of the absence from his office, or from the city, or from the state, of the only officer from whom the required official receipt can under the letter of the law be obtained? The Treasurer might be ill, or a case can be imagined where the death of the Treasurer might occur on the last day for

filing prescribed by the letter of the statute, and wherein it would be impossible to appoint his successor in time to have such successor accept the required deposit and issue the required receipt therefor.

"In such case, the untrammelled constitutional privilege of all eligible persons to become candidates for office requires us--if we are to escape holding this statute invalid for that it contravenes the spirit and the letter of the Constitution in denying this privilege--to say that if the proposal candidate be in no wise in default, and the death of the Treasurer, or the latter's illness, or his absence from his office, from the city, or from the State, shall prevent the making of the required deposit and the obtention of the required receipt on the day prescribed by the letter of the statute, all that should be required is the earliest possible payment and obtention and filing thereafter of such receipt; provided, such filing of the receipt shall be in time to allow of the performance by the Board of Election Commissioners of the very first of the ensuing duties incumbent upon them by law.

The above doctrine has been upheld in the case of State ex rel. Muse v. Haden, County Clerk, 349 Mo. 982, 163 S.W. (2d) 946. In this case the person attempting to file for office had his receipt for filing fee and made an honest and reasonable effort on the last day for filing, from about seven o'clock p.m. to almost midnight, to locate the county clerk at both his office and his home. It was admitted that no effort was made until after the usual closing hours of the county clerk's office, wherein it was required to file as required by Section 11553, supra. The court, in holding that the county clerk must place the man's name on the official ballot, stated, l. c. 948:

"Indeed, respondent concedes in his brief that under the law prospective

candidates have 'the right to file up until midnight,' and so the question of whether it was the custom and practice in said county for the county clerk to keep his office open until midnight on the last day for filing is of no consequence. As a matter of fact the Commissioner found that issue against relators. The further finding of the Commissioner was that there was no evidence that either the clerk or deputy intentionally or purposely avoided being located. But if a candidate has the whole of the last day within which to file, it necessarily follows that it is the clerk's duty to be available, either in person or by deputy, during that period, and as the Commissioner has found as a fact that they were not so available, we hold what was done by relators in the premises constituted a substantial compliance with the statutes."

(Emphasis ours.)

It can readily be seen from the above quotation, that not only does a candidate have the whole of the last day in which to file, but that it is the clerk's duty to be available, either in person or by deputy, during that period.

Conclusion

Therefore, it is the opinion of this department that (1) the man referred to in your letter is entitled to have his name printed on the official ballot for the August 6th, primary election of 1946, and that (2) it is the duty of the County Clerk to be available, either in person or by deputy, the whole of the last day in which a candidate may file.

Respectfully submitted,

APPROVED:

PERSHING WILSON
Assistant Attorney General

J. E. TAYLOR
Attorney General

PW:CP