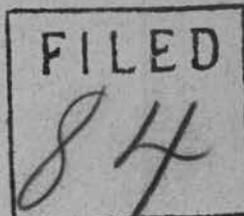


ELECTION: County committee may nominate candidate for county judge to fill vacancy caused by death of incumbent subsequent to primary.

September 11, 1948



9-13

Honorable Edward Speiser
Prosecuting Attorney
Chariton County
Keytesville, Missouri

Dear Sir:

We have received your request for an opinion of this department, which request is as follows:

"Our Presiding Judge of the County Court died September 6th. His term of office expires Jan. 1, 1951. He was elected on the Democratic ticket in 1946. It would appear that under Sections 2477 and 11509, MRSA that the Governor appoints his successor to serve for a term ending the first Monday in January in 1949. Under Sections 11538 and 11562 MRSA the Democratic Central Committee for Chariton County is given certain authority to fill vacancies on the ticket created by death of a nominee of the Party. In State ex inf., Barrett vs. McClure, 299 Mo. page 688, the Supreme Court ruling therein made seems to authorize the County Central Committee to select a candidate for the office to serve that portion of the unexpired term commencing the first Monday in January, 1949.

"I would like to have your opinion setting forth the exact procedure to be followed to insure the valid election in November of a successor to the Governor's appointee. Also I would like to know if other political parties can place the name of a candidate of their choice on their ticket for submission to the voters at the general election in November."

Section 11562, Mo. R.S.A. provides that vacancies occurring after the holding of any primary and resulting from death or

resignation of the nominee of a party at such primary, shall be filled by the party committee of the district, county or state, as the case may be.

Section 11538, Mo. R.S.A. likewise provides for filling of vacancies by the central committee of the district in which the vacancy occurs.

Section 11509, Mo. R.S.A. contains the following provision:

"Whenever any vacancy, caused in any manner or by any means whatsoever, shall occur or exist in any state or county office originally filled by election by the people, other than the office of lieutenant-governor, state senator, representative, sheriff or coroner, such vacancy shall be filled by appointment by the governor; and the person so appointed shall, after having duly qualified and entered upon the discharge of his duties under such appointment, continue in such office until the first Monday in January next following the first ensuing general election--at which said general election a person shall be elected to fill the unexpired portion of such term, or for the ensuing regular term, as the case may be, and shall enter upon the discharge of the duties of such office the first Monday in January next following said election: Provided, however, that when the term to be filled begins or shall begin on any day other than the first Monday in January, the appointee of the governor shall be entitled to hold such office until such other date."

In the case of State ex inf. Barrett vs. McClure, 299 Mo. 688, the court held that where a vacancy occurred after the primary election by reason of the death of an officer, in that case the county treasurer, whose term would not expire in January following the general election, a vacancy existed for which nomination might be made by the county committee under the provisions of what is now Section 11562, Mo. R.S.A. This case is, we believe, authority for action on the part of the county committees in Chariton county in nominating candidates whose names should be placed on the ballot in November as candidates for the unexpired term of presiding judge of the county court. Both the Republican and Democratic parties are, of course, entitled to nominate candidates in this manner. A

meeting of the committee should be called and thereafter a certificate of nomination executed in accordance with Section 11525, Mo. R.S.A. and Section 11533, Mo. R.S.A. and filed with the county clerk. No time is specified for filing of such certificate but it should be done as promptly as possible.

CONCLUSION

This department is of the opinion that a vacancy in the office of presiding judge of the county court whose term expires January 1, 1951, which occurred by reason of the death of the incumbent subsequent to the primary election, should be filled at the general election in November and candidates for the unexpired term should be nominated by the central committee of the respective parties.

Respectfully submitted,

ROBERT R. WELBORN
Assistant Attorney General

APPROVED:

J. E. TAYLOR *JET*
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