



OFFICES OF THE

ATTORNEY GENERAL OF MISSOURI

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JOHN C. DANFORTH
ATTORNEY GENERAL

OPINION LETTER NO. 270

Honorable William Dick Fickle
Prosecuting Attorney
Platte County
Post Office Box B
Platte City, Missouri 64079

Dear Mr. Fickle:

This letter is in reply to your recent inquiry concerning the following question:

"Under Section 59.050 RSMo (H.B. 1318), how may a candidate for his party's nomination as candidate for the office of Circuit Clerk ex officio Recorder of Deeds withdraw from the Clerk's race and enter the race for the newly established office of Recorder of Deeds?"

Actually, you have asked two questions. First, you ask how a candidate for office of circuit clerk ex officio recorder of deeds may withdraw from the race, at this time.

Section 120.375, RSMo, provides as follows:

"1. Any person who has filed a declaration of candidacy or any person nominated in the August primary election by his party as a candidate for an elective office, who wishes to withdraw as a candidate, must do so by filing a written, sworn statement of withdrawal in the office in which his original declaration of candidacy was filed not later than forty-five days prior to the day of the primary or general election, as the case may be.

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"2. The name of a person who has properly filed a declaration of candidacy, or of a person nominated by his party for office, who has not given notice of withdrawal as provided in subsection 1, shall, except in case of death, be printed on the official primary or general election ballot, as the case may be."

Since it is presently less than forty-five days until the primary election, it is our view that any person who has properly filed for the office may not withdraw his name from the ballot. Therefore, the only method of withdrawal available would be to follow the procedures described in Section 120.375, RSMo (quoted above) after the primary election. (This obviously assumes the person is victorious in his primary race).

Secondly, you have asked how a person may enter the race for the new office of recorder of deeds. House Bill 1318, 77th General Assembly, Second Regular Session, with an emergency clause, was signed by the Governor on June 21, 1974. It is applicable to Platte County according to the information you have provided. Further, the emergency clause specifically refers to Platte County. It provides for this exact situation. House Bill 1318 states, in part:

"2. Candidates for the office of recorder of deeds in the election to be held in 1974 only, shall be selected in the same manner as provided for nominations to fill vacancies caused by resignation or withdrawal of a candidate as provided for in section 120.550, RSMo."

Section 120.550, RSMo, states:

"1. The party committee of the county, district or state, as the case may be, shall have authority to make nominations in the following cases:

(1) When a vacancy in the candidates for nomination as a party candidate for election to any office shall occur by reason of death or resignation after the last day in which a person may file as a candidate for nomination;

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(2) When any person nominated as the party candidate for any office shall die or resign before election;

(3) When a vacancy in office which is to be filled for the unexpired term at the following general election shall occur after the last day in which a person may file as a candidate for nomination.

"2. Nominations to fill vacancies caused by death shall be filed, as the case may be, either with the secretary of state not later than fifteen days before the day fixed by law for the election of the person in nomination or with the election authority not later than ten days before such election. Nominations to fill vacancies caused by resignation or withdrawal of a candidate shall be filed with the secretary of state or election authority not later than thirty days before the day fixed for the election.

"3. No name shall be allowed on the ballot until the required fee has been paid."

Therefore, it is our view that, for the 1974 election of the new office of recorder of deeds, each county party committee shall nominate a candidate and that nomination shall be filed with the appropriate authority no later than thirty days before the election date.

Very truly yours,



JOHN C. DANFORTH
Attorney General