

ELECTIONS: Name of candidate should not be printed on official ballots when such candidate dies before primary election.

July 19, 1946

FILED 6



Honorable Wilson Bell
Secretary of State
Jefferson City, Missouri

Dear Sir:

Receipt is acknowledged of your letter with the letter attached from the County Clerk of Stone County that submitted facts upon which an official opinion was requested and which reads as follows:

"Mr. J. W. Ellis, Probate Judge of Stone County, had filed as a candidate for nomination to succeed himself,

"Mr. Ellis died June 15th, 1946, The copy for printing the sample ballots had gone to the printer before his death, so his name appears on the sample Ballots.

"The question has been discussed pro and con here as to whether we have the authority to place his name on the official Ballots or leave it off.

"I do not find anything in the Statutes in regard to this question, will appreciate the favor if you will give what information you can as to what should be done in regard to dropping the name or leaving it to be put on the official Ballots."

On the facts submitted, the question propounded for our opinion is whether or not the name of a candidate for public office should be printed on the official ballot for the coming primary election when the candidate has died before the time for printing the official ballots. In connection with this question your attention is directed to certain sections of the statutes pertaining to primary elections.

Section 11550, Laws of Missouri 1944, ex. sess. provides, in part, as follows:

"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: * *"
(Emphasis ours)

Apparently, Mr. Ellis had complied with this section in submitting his declaration of candidacy within the proper time and in the correct form.

Section 11557, R.S.Mo. 1939, provides for an official ballot to be printed, and reads as follows:

"An official ballot shall be printed and provided for use at each voting precinct in the form provided herein. The names of all the candidates for the respective offices, who shall have filed declaration papers as in this article prescribed, shall be printed thereon."

In construing this Section and Section 11550, supra, we are primarily concerned with the meaning of the word "candidate". That word has been defined as follows in 12 C.J.S., p. 1110:

"* * * In its ordinary, popular meaning, which is also its legal meaning, as signifying one who is seeking an office, one who is offered, or who offers himself, for the same, * * *"

For all practical purposes it can hardly be said that Mr. Ellis is now a person who aspires to public office or who offers himself for the same, although at one time he may have done so. Consequently, under the above definition he is not now a candidate for the office to which he had originally aspired.

Under Section 11550, supra, it is our notion that for a person to have his name printed on any official ballot of a primary election he must not only have filed his declaration for candidacy within the time and in the manner prescribed, but he must presently be a candidate. Also, under Section 11557, supra, the names printed on an official ballot for a primary election must belong to persons who are presently candidates.

It is a cardinal rule of statutory construction that we ascertain the lawmakers intent from the words used, and to apply to the language a plain and rational meaning. Artophone Corporation v. Coale, 133 S.W.(2d) 343, 345 Mo. 344. This rule must be observed in construing those statutes relating to the question. In State ex rel. St. Louis Public Service Company v. Public Service Commission, 34 S.W. (2d) 486, 326 Mo. 1169, the court said at S.W. l.c. 489, "that a statute should not be construed in a way to make it unreasonable when it can be given a reasonable construction."

In State ex rel. Neu v. Waschter, 58 S.W.(2d) 971, the right of a candidate in a primary election to withdraw was involved. In construing the particular statute, in connection with the question, the court said at l.c. 974-975:

"In our opinion, a construction of this statute which would make it mean that a candidacy once declared by the filing of papers can never be recalled, and that the name of the candidate must be printed on the ballot, is so violent and unreasonable that it ought not to be adopted if any other construction is possible. It would mean the names of deceased declarants, those who had moved out of the city or state and admittedly become ineligible, or those who would refuse to continue in the race if nominated, nevertheless must be voted upon by the people. And in cases where a deceased or ineligible declarant received the highest number of votes it would nullify the whole primary election. 46 S.J. Sec. 267, p. 207; Sheridan v. St. Louis, 183 Mo. 25, 81 S.W. 1082, 2 Ann. Cas. 480."

* * * * *

"* * * And when the statute, section 10441, provides the names of candidates 'who so declare' shall be printed on the official primary ballot, it is equivalent to saying the names of those who do not so declare shall not be printed. The very purpose of the law would be defeated if the statute were held to mean the name of every declarant must be published as a candidate, regardless of intervening eventualities such as death, withdrawal, etc."

In the instant case, to say that a dead man's name must be printed on the official ballot for the primary election would defeat the purpose of the statute requiring the names of all candidates to be printed on the official ballot, and would be an unreasonable construction of the statute.

In further support of our construction placed on Sections 11550 and 11557, supra, in which we concluded that only the names of those persons who are presently candidates for office should be printed on the official ballots for a primary election, we cite the case of State ex rel. Baneroft v. Frear, 144 Wis. 79, 128 N.W. 1068, in which was involved the outcome of a primary election for the Office of Attorney General where one of the candidates had died before the election. In construing a certain section of the State Primary Law the court said at N.W. 1.c. 1071:

"(a) Section 18, Subd. 1, Primary Law, provides: 'The person receiving the greatest number of votes at a primary as the candidate of a party for an office, shall be the candidate of that party for such office, and his name as such candidate shall be placed on the official ballot at the following election.' We do not think that a dead man is a 'person' within the meaning of this statute. The word 'person' as it is ordinarily used means a living human being. It is so defined in Webster's and in Johnson's and in the Century Dictionaries. It is so defined by the courts. *Sawyers v. Mackie*, 149 Mass. 269, 21 N.E. 307; *U.S. v. Crook*, 25 Fed. Cas. 695, 697; *Morton v. Telegraph Co.*, 130 N.C. 299, 41 S.E. 484; *Caldwell v. Wallace (Ala.)* 4 Stew. & P. 282, 285; *Morrill v. Lovett*, 95 Me. 165, 169, 49 Atl. 666, 667, 56 L.R.A. 634. In the latter case it is said; 'The natural and obvious signification of the word "person" in a statute is a living human being.' Both the Maine and Massachusetts courts significantly say that when statutes refer to one who is dead they speak of him as a 'deceased person' or a 'person deceased.' It would seem ridiculous to place any other interpretation on the statute under consideration, because it expressly provides that the person receiving the greatest number of votes at the primary shall be the candidate, and that his name shall be placed on the election ballot. The Legislature did not in-

tend that, if a dead man received a plurality of the votes cast, he became the candidate of the party, and that his name must go upon the ballot, to be voted for at the ensuing general election. * * *

In this case the court said that it did not think that a dead man is a "person" within the meaning of the statute, and by analogy we do not believe that a dead man is a "candidate" within the meaning of the statutes herein referred to.

CONCLUSION

Therefore, it is the opinion of this department, that under Section 11550, Laws of Missouri, 1944, Ex. Sess., and Section 11557, R.S.Mo. 1939, only the names of existing candidates, who have filed their declaration of candidacy in the form and manner prescribed by law, and within the proper time, should be printed on the official ballots of any primary election.

Respectfully submitted,

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APPROVED:

J. E. TAYLOR
Attorney General