

ELECTIONS: Where a person has duly filed for public office and within the proper time files a withdrawal of that candidacy, said person cannot subsequently file a withdrawal of the withdrawal.

June 10, 1948

Honorable James Glenn
Prosecuting Attorney
Macon, Missouri



Dear Sir:

Your opinion request reads as follows:

"I have been requested to obtain your opinion on the following point of law.

"Prior to the final date for filing for public office, one Henry C. Carter, duly filed for the office of Judge of the Northern District of the county court on the Democrat ticket. After the final date had expired, Mr. Carter filed with the clerk of the county court notice of his withdrawal as a candidate for said office. For your information a copy of the withdrawal of Mr. Carter's is enclosed herewith.

"At the present time, Mr. Carter seeks to withdraw his withdrawal and have his name on the ballot for said office in the August primary.

"Your opinion is requested as to whether Mr. Carter can at this date file for the office from which he has previously withdrawn."

As we understand your letter, a person has properly and legally filed for office prior to the final date of filing for same pursuant to Section 11550, Laws of Missouri 1944, Ex. Sess., page 24, Section 1. This section provides the form of the declaration to be used by a candidate for office in the primary elections in this state. Subsequent to this filing, the person filed with the Clerk of the County Court a notice of his withdrawal as a candidate for the office previously filed for. This withdrawal was in compliance with Section 11544, R.S. Mo. 1939, and complies with

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the requirements set out therein. At this date, it is asked whether or not the person who had filed for office and then withdrawn may now withdraw his withdrawal. There is no statutory authority in the State of Missouri specifically providing for such a procedure. We have been unable to find but one other case that deals with this problem. In C.J.S., Vol. 29, page 130, Section 95, it provides as follows:

"Withdrawal of withdrawal. In the absence of statutory authority a candidate who has effectively withdrawn his candidacy prior to the primaries is not entitled to withdraw his withdrawal."

The case set out in annotation in support of the above quoted statement is *Brower et al. v. State, ex rel. Ritz*, 13 Ohio App. Rep. 259. In that case the court was asked to mandamus the board of Deputy State Supervisors of Elections to print the relator's name upon the official primary ballot. The facts were that the relator had duly filed his declaration of candidacy. On June 26 the relator filed with the board a withdrawal of his candidacy. On June 28 this withdrawal was accepted. On June 29 the relator filed a withdrawal of his withdrawal of candidacy. The court, in passing upon the effect of these actions by the relator, held, l.c. 261:

"The statute does not expressly or by inference recognize a withdrawal of a withdrawal of candidacy. Consequently the law imposes no duty upon such Board of Deputy State Supervisors of Elections with respect thereto. Under the well established law governing proceedings in mandamus, such board cannot therefore be compelled to act where the statute imposes no duty."

In view of this decision and by reason of the fact that there is no Missouri statute which expressly or by inference recognizes a withdrawal of a withdrawal of candidacy, and assuming the validity of the actions in your particular case, we must conclude the following:

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CONCLUSION

Where a person has duly filed for public office and within the proper time files a withdrawal of that candidacy, said person cannot subsequently file a withdrawal of the withdrawal.

Respectfully submitted,

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Assistant Attorney General

APPROVED:

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J. E. TAYLOR
Attorney General