

ELECTIONS:

A party primary ballot need not contain the name of an office where no one has filed a declaration seeking the party primary.

May 23, 1952

5-23-52

Honorable Robert A. Dempster
Prosecuting Attorney of Scott County
Sikeston, Missouri



Dear Sir:

Reference is made to your recent request for an official opinion of this department. Your request reads in part as follows:

"Mr. Harry C. Watkins, Jr., County Clerk of Scott County, has asked me to write you about the following problem. In our County, no one filed for the Republican nomination for two offices, Prosecuting Attorney and Surveyor. In printing the ballots, it will not be necessary, in fact impossible, to print the name of a candidate for such nomination. The question is, will it be necessary to print such office on the ballot, on the Republican side? Or, to state it another way, can that printing expense be saved by not printing such office on the Republican ticket? Also, this further question, about the same thing, will it be necessary to print such office on the ballot for the general election, since no Republican will be nominated for such two offices? My first question concerns the primary ballot."

You state that no one filed a declaration of candidacy seeking the Republican nomination for the offices of prosecuting attorney and surveyor of Scott County, and inquire whether

Honorable Robert A. Dempster

or not these two offices must be printed on the Republican primary ballot.

The primary election was unknown at common law and is governed solely by applicable constitutional and statutory provisions. The laws relating to primary elections in this state are contained in Sections 120.300 to 120.650, RSMo 1949. The purpose of such laws is to allow the voters of a political party to choose their candidates and to give a completely free and open opportunity to anyone who wants to be a candidate for office. 29 C.J.S., Sec. 111. State ex rel. Gipe v. Nelson, 358 Mo. 164. Section 120.300 provides for the nomination of candidates by primary election as follows:

"Hereafter, except as otherwise provided by law, all candidates for elective offices shall be nominated by a primary election held in accordance with sections 120.300 to 120.650. Sections 120.300 to 120.650 shall not apply to special elections to fill vacancies, nor to county superintendents of schools, to city officers not elected at a general state election, to town, village or school district officers."

Section 120.340, RSMo 1949, provides that a person seeking nomination must file a declaration of candidacy. Said section reads 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 sections 120.300 to 120.650, 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: * * * ."

Section 120.420 provides that the names of all candidates who have filed declaration papers shall be printed on the ballot as follows:

"An official ballot shall be printed and provided for use at each voting precinct in the form provided herein. The names

Honorable Robert A. Dempster

of all the candidates for the respective offices, who shall have filed declaration papers as in sections 120.300 to 120.650 prescribed, shall be printed thereon."

Section 120.450 prescribes the form of the ballot as follows:

"At all primaries there shall be as many separate tickets as there are parties entitled to participate in the primary election. There shall also be a nonpartisan ticket upon which, under appropriate title of each office, shall be printed the names of all persons by whom declaration papers have been filed, as required by sections 120.300 to 120.650, who do not announce by such declaration papers as candidates for any political party as defined by sections 120.300 to 120.650. The names of all candidates shall be arranged under the appropriate title of the respective offices and under the proper party designation upon the party ticket or upon the nonpartisan ticket, as the case may be. The names of the candidates for each office shall be alternated on the ballots used in the several election districts or precincts so that each name shall appear thereon substantially an equal number of times at the top, at the bottom and in each intermediate place, if any, or the lists or groups of names in which such candidate's name belongs. The names of the candidates shall be printed, and at the left of the name of each candidate, at the beginning of each line upon which the candidate's name is printed, a small square shall be printed, the sides of which shall be not less than one-fourth of an inch in length. The title of the office and the name of all candidates for that office shall be separated from the title of the following office and group of candidates by a line not to exceed four points in width. At primary elections at which committeemen or committeewomen of any party are to be elected, in addition to the names of candidates for offices printed on the ballot, there shall be printed thereon at least one blank line with a square to the

Honorable Robert A. Dempster

left of the same, as herein specified, for the purpose of allowing the voter to write in the name of his choice for office. As nearly as practicable, the ballot shall be in the form described in sections 111.420 and 111.430. At the head of each such ticket, immediately following the date of such election, shall be printed the following: "Instruction to voters: Place an X in the square opposite the name of the person for whom you wish to vote." * * * ."

We do not believe that the foregoing cited provisions require that the name of an office to be filled at the general election be printed on the party primary ballot where no candidate has filed seeking the nomination of that party. As was stated supra, we believe the purpose of the primary law is to allow each party to select their candidate for the particular office and that if, in fact, no person has filed seeking that party's nomination, then such party is precluded from participating in the primary election in regard to that office.

I am enclosing a copy of an opinion of this department to the Honorable H. D. Allison, County Clerk of Buchanan County, August 10, 1938, holding that a person may not be nominated in the general election by write-in votes where such person has not filed declaration papers.

You next inquire whether it is necessary to print the name of an office on a party general election ballot where no one has been nominated for the office. In answer to this question, I am enclosing a copy of an opinion to the Honorable Arthur U. Goodman, Jr., Prosecuting Attorney of Dunklin County, September 23, 1944, holding that the ballot of a political party to be used in the general election shall contain the name of an office to be filled although no person has been nominated for the office.

Honorable Robert A. Dempster

CONCLUSION

Therefore, it is the opinion of this department that "a party primary ballot need not contain the name of an office where no one has filed a declaration seeking the party nomination."

We are further of the opinion, that the official ballot to be used at the general election shall contain a space for the office of prosecuting attorney and surveyor.

Respectfully submitted,

DONAL D. GUFFEY
Assistant Attorney General

APPROVED:



J. E. TAYLOR
Attorney General

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