

County Commissioner, Vacancy in Office of. Vacancy, in Office of County Commissioner. Primary Election, Nomination at. Nomination, to Fill Vacancy. Elector, May Write in Name.

An appointee to fill a vacancy in the office of the County Commissioner, holds only until the next general election, and the electors at the primary election may write in the name of their choice as candidate and may also designate the office although the office is not designated on the official ballot at the primary election.

September 14th, 1916.

Hon. James L. Davis, County Attorney,
Billings, Montana.

Dear Sir:—

I am in receipt of your letter of the 12th instant, from which it appears that a County Commissioner, whose term of office expired

in 1921, resigned and thereafter on August 15th, 1916, the district judge appointed Mr. Rademaker to fill the vacancy. At the recent primary election no names appeared on the ballot for this office, but some of the electors wrote in the name of Mr. Rademaker and also properly designated the office for which they desire him to be a candidate. Mr. Rademaker received the majority of the votes cast as a candidate for that particular office.

Under the facts above stated, is it the duty of the County Clerk to certify Mr. Rademaker as a nominee and to place his name upon the official ballot for the general election?

There is not any doubt but what a vacancy existed, and that an election can properly be had to fill the same, (State ex rel McGowan v. Sedgwick, 46 Mont. 187; 127 Pac. 94) and the electors, having the right to vote for one candidate for every office to be filled and to write into the ballot the name of the party of their choice, it necessarily follows that Mr. Rademaker is the legal nominee, and is entitled to have his name appear upon the official ballot to be used at the general election.

Yours very truly,

J. B. POINDEXTER,

Attorney General.