Ballot—Election—Fees—Names Written In.

One whose name is written in on the ballot at the primary nominating election cannot be charged a fee under the provisions of Chapter 133, Session Laws of 1923.

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My dear Mr. Ewald:

You have requested my opinion as to the validity of votes for candidates whose names are written in on the ballot and who have not paid any filing fees.

Section 640, Revised Codes of 1921, as amended by Chapter 133, Session Laws of 1923, provides:

> "Any person who shall desire to become a candidate for nomination to any office under this law shall send * * * to the Secretary of State, County Clerk, or City Clerk, a petition for nomination, signed by himself, accompanied by the filing fee hereinafter provided for."

The filing fee hereinafter provided for is for the purpose of permitting the party to become a candidate **"under this law,"** that is, for the privilege of having his name placed on the ballot as a candidate for office at the primary election.

Manifestly, the privilege of having one's name placed upon the primary ballot to be voted for at the primary election is a privilege for which a reasonable charge could be made by the Legislature.

It was held by a former Attorney General that under the provisions of our Constitution electors may not be denied the right to write in on the ballot the names of persons for whom they desire to vote (Vol. 7, Opinions Attorney General, p. 57) citing the following provisions of our Constitution:

Section 13 of Article IX:

> "In all elections held by the people under this constitution, the person or persons who shall receive the highest number of legal votes shall be declared elected."

Section 5 of Article III:

> "All elections shall be free and open, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage."

Section 1 of Article IX:

> "All elections by the people shall be by ballot."

The provisions of Chapter 133 are not unconstitutional because they provide for nominations and require them to be made in a certain way in order to entitle the candidate to have his name printed on the official ballot; provided the voter is allowed the privilege of writing on the ballot the name of any other person. But, as the Constitution guarantees the electors the right to vote for whom they please, a law restricting the right to vote for those candidates only whose names appear upon the official ballot is depriving the elector of his constitutional rights. (15 Cyc. 346, 288 & 289; People ex rel. Bradley v. Shaw, 16 L. R. A. 606; Cole v. Tucker, 29 L. R. A. 668; State ex rel. Lamar v. Dillon, 22 L. R. A. 124.)

In the case of Littlejohn v. People (Colo.), 121 Pac. 159, the Supreme Court of that state held that the provisions of the statute requiring candidates for School Trustee to file a written notice of intention a certain number of days prior to the annual election and

requiring the clerk to print ballots bearing the names of candidates who have certified such intention and providing that no other person shall be voted for, constituted a restriction on the right to vote, and is, therefore, unconstitutional.

The right to write in on the ballot the name of any person as their choice is a personal privilege of each individual elector. In this way it becomes the right of a number of persons, who have united in writing in the name of the same person, to have their candidate placed on the ballot at the general election should he receive a plurality of the votes cast at the primary election.

It is, therefore, my opinion that a party whose name was thus written in on the ballot may not be charged a fee under the provisions of Chapter 133, Session Laws of 1923, since his name was not placed on the primary ballot under the provisions of that Act.

Very truly yours,

WELLINGTON D. RANKIN,

Attorney General.