

**Candidates—Elections — Primaries — Nominations—Tie
Vote.**

The nominee in case of a tie vote must be determined by lot, and in such case the candidate eliminated by the lot may not run as the nominee of the ticket even though the one receiving the nomination withdraws.

E. J. Cummins, Esq.,
County Attorney,
Deer Lodge, Montana.

My dear Mr. Cummins:

You have requested my opinion upon the following question: A and B were candidates for the nomination on the Republican ticket. A defeated B at the primary election. The names of both A and B were written in on the Farm-Labor ticket, each receiving the same number of votes. You desire to know whether B can run on the Farm-Labor ticket.

Section 655, R. C. M. 1921, provides for the procedure in ascertaining the nominee in case two or more receive a tie vote. This section provides as follows:

“In case there shall be no choice for nomination for any office by reason of any two or more persons having an equal and the highest number of votes of his party for nomination for either of said offices, the Secretary of State shall immediately give notice to the several persons so having the highest and equal number of votes to attend at his office, either in person or by attorney, at a time to be appointed by said secretary, who shall then and there proceed to publicly decide by lot which of said persons so having an equal number of

votes shall be declared duly nominated by his party; and the governor shall issue his proclamation declaring the nomination of such person or persons, as above provided."

Therefore, in answer to your question should B be declared the nominee on the Farm-Labor ticket by following the procedure outlined in Section 655, supra, then, of course, he may run on that ticket. On the other hand, should A be declared the nominee on the Farm-Labor ticket then B cannot run as the nominee on that ticket even though A withdraws as such candidate.

I have assumed that the particular office in question is a state office, but if in fact it is a county office then the provisions of Section 654, R. C. M. 1921, would control and the same result would follow.

Very truly yours,

WELLINGTON D. RANKIN,

Attorney General.