

Elections—Primary Elections—County Central Committee—Vacancies.

Where a person is nominated at the primary election by having his name written in on the ballot and does not solicit the nomination nor declare his acceptance of the nomination within 10 days after the election the county central committee is not authorized to fill the vacancy.

September 22, 1928.

Robert S. McKellar, Esq.,
County Attorney,
Glasgow, Montana.

My dear Mr. McKellar:

Your letter was received relative to the action of the county central committee of the democratic party in attempting to fill the office of representative on the democratic ticket where no certificate of nomination was filed previous to the primary election and where the name of a party was written in on the ballot at the primary election.

It appears that this party whose name was written in did not file the declaration accepting the nomination within ten days after the election as provided in chapter 127, laws of 1927.

This office has held that a vacancy can be filled by the county central committee of any party only in the event that it occurs among the candidates of their respective parties nominated by the primary nominating election. This ruling is based on the language used in chapter 98, laws of 1927. If the party's name is written in on the ballot upon

his active solicitation before the primary election this office has ruled that he became a candidate of his party even though he had not filed his petition for nomination as a candidate previous to the election. It was also held that if he did not solicit the writing in of his name at the primary election he did not become a candidate of his party except by filing with the county clerk within ten days of the date of the election his declaration accepting such nomination.

This office has also ruled that where a party solicited the writing in of his name but failed to comply with the provisions of chapter 125, he nevertheless was a candidate of his party and that the vacancy could be filled by the county central committee.

If we are correct in this ruling, then it would follow that where the nomination was not solicited and not accepted within ten days after election that there was no candidate of the party at the primary election, and hence no vacancy that the county central committee can fill.

You do not state in the facts submitted by you whether Mr. Friedle solicited the writing in of his name. If he did not do so and if he did not accept the nomination, then it is my opinion that the county central committee cannot fill the vacancy.

Very truly yours,

L. A. FOOT,
Attorney General.