

You have submitted the following request:

"Your opinion is respectfully requested as to whether candidates defeated at the primary nominating election, who propose to file their nominating certificates as independent candidates, as provided in Section 615, are required to pay the filing fee fixed by Section 618.1, Revised Codes of 1935."

The answer to this question lies in the construction to be given to said Section 618.1, which reads: "All candidates nominated under the provisions of **this chapter**, shall, upon filing the certificate of nomination as provided by sections 614 and 618 of the Revised Codes of Montana, 1935, pay to the officer with whom the certificates of nomination are required to be filed, the fees provided by section 640 of the Revised Codes of Montana, 1935, and such filing fee shall be paid by every person whose name appears upon the ballot at any general election, regardless of the method pursued to secure nomination, provided, however, that only one filing fee shall be required from any candidate, regardless of the method used in having his name placed upon such general election ballot." (Emphasis ours.)

In order to understand the intent and purpose of this section it is necessary to consider its setting and history. The law dealing with party nominations by direct vote, or the direct primary is set out in Chapter 65 of the Political Code, 1935. (Chapter 52, Political Code, 1921.) This is the Initiative Measure enacted November, 1912, with subsequent amendments. Section 640 R. C. M. 1935 provides what fees shall be paid by primary candidates of political parties which cast 3% or more of the total vote cast for Representative in Congress in the next preceding general election. For such candidates the primary system is exclusive. (Section 639, R. C. M. 1935.) This section also expressly provides that any political party that did not cast 3% or more of the total vote cast for Representative in Congress, and any new political party about to be formed or organized, may make nominations for public office as provided in Section 612 R. C. M. 1935. The latter section is a part of Chapter

Opinion No. 335.

Elections—Candidates—Independent Candidates—Filing Fees.

HELD: A candidate, who was defeated at the primary nominating election and who proposes to file a nominating certificate as an independent candidate must pay the filing fee fixed by Section 618.1 R. C. M. 1935.

August 4, 1936.

Hon. Sam W. Mitchell
Secretary of State
The Capitol

64 of the Political Code, 1935, and was a part of the original enactment in 1889. It provides that a "convention or primary meeting", that is, "an organized assemblage of electors or delegates representing a political party or principle", may nominate candidates for public office. Section 615 R. C. M. 1935, also a part of said Chapter 64, provides that candidates for such public office may be nominated otherwise than by convention or primary meeting by certificate of nomination signed by 5% of the number of votes cast for the successful candidate for the same office at the next preceding election.

Section 618.1 was enacted as Chapter 28, Laws of 1933. The title to that Act reads: "An Act to Amend Chapter 51 of Part III of the Political Code of the Revised Codes of the State of Montana of 1921, Relating to the Nomination of Candidates by Convention or Primary Meeting or by Electors, by Adding a New Section Thereto, to be Known as Section 618A, Providing for the Payment of a Fee for Filing Certificates of Nomination of Candidates Nominated Under the Provisions of this Chapter." (Emphasis ours).

The first paragraph of Section 1 provides: "That Chapter 51 of Part III of the Political Code of the Revised Codes of the State of Montana, of 1921, be, and the same is hereby amended by the addition of a new section to be known as 618A to read as follows:" (Here follows the paragraph numbered 618.1 R. C. 1935, quoted above.)

As above indicated, the sections contained in Chapter 64, 1935 Codes, were contained in Chapter 51, 1921 Codes.

Prior to the enactment of said Chapter 28, there was no provision for the payment of a fee by "convention" or "petition" candidates. The purpose of said chapter was to remedy that situation and to require of such candidates the same fee as that required of candidates under the party primary system. It expressly provides that "all candidates nominated under the provisions of this chapter" shall pay the fees required of party primary candidates provided by Section 640 R. C. M. 1935. As if to emphasize its intention, the legislature in-

corporated the words "and such filing fee shall be paid by every person whose name appears upon the ballot at any general election, regardless of the method pursued to secure nomination * * *." The proviso with reference to the payment of only one filing fee, regardless of the "method" used in securing the nomination, must be interpreted as referring to the methods of securing such nomination mentioned in said Chapter 64, to which the title and the first section of said Chapter 28 expressly refers. Had the legislature intended to go beyond the methods of nomination provided for in Chapter 64, we believe it would have said so, as they were dealing entirely with the fees to be paid by candidates who pursued the method or methods provided for in said Chapter 64.

Moreover, such interpretation would seem to be just. The candidate who has been a party candidate under the primary system, has had a run for his money; if he is dissatisfied with the result and desires to try the methods provided by Chapter 64, he should be required to pay the filing fees therein provided. Unless he must pay such fee, he has an advantage over those who do not participate in the party primary system. Suppose, for example, he should have been a candidate for county treasurer in the primaries, and having been defeated, now chooses to become a candidate for county clerk and recorder under the convention or the petition system. It does not seem reasonable that he should escape payment of the fee provided for in the first part of said Section 618.1. That he may choose to run as a candidate for the same office for which he was defeated should not make any difference. At least, no exception is provided in said section.

For the foregoing reasons it is my opinion that this question should be answered in the affirmative.

NOTE: Overrules opinion No. 604, Vol. 15, p. 413.