

**Direct Primary Law. Nomination for Office. Vacancies, How Filled.**

Where nominations are actually made for certain county offices by a political party and there are vacancies on the party ticket, through failure to nominate any person as a party candidate for office, such vacancy may be filled by the party committee as provided by Section 13, of Chapter 99, Laws of 1905.

In counties having adopted the Direct Primary Law, nominations can only be made by direct primary, by petition, or by nominations filed by the party committee to fill vacancies arising after the holding of the primary, where no nomination for a

particular office was by the party made at such primary election.

However, if a party makes no nominations whatsoever under this law, it has no ticket in the field and there can be no vacancies upon the ticket to fill.

Helena, Mont., August 23, 1906.

Harry L. Wilson, Esq., County Attorney, Billings, Mont.:

Dear Sir: I am in receipt of your favor of the 20th inst., making further request for opinion of my office respecting the construction of the Direct Primary Law.

The question by you presented may be abbreviated as follows: In the event that nominations of candidates on the democratic ticket for all the county offices to be filled at the next general election, are not made at the primary election, does it lie within the power of the Democratic Central Committee to file nomination papers of persons as candidates for office to fill vacancies on the ticket under said primary election law?

The law (Chapter 99, Laws of 1905, page 198) contemplates, and, in fact, directs by Section 2 thereof that "hereafter all candidates for elective offices in the county and all delegates to country conventions of any political party shall be nominated," in counties having adopted this law, in only one of two ways, viz:

"1. By a primary held in accordance with this act;

"2. By nomination papers signed and filed as provided by existing statutes."

"Existing statutes" provided for the nomination of candidates for elective offices of the county in one of two ways, viz: First, by convention (Section 1310, Political Code), or Second, by petition (Section 1313, Political Code). The convention method of making nomination to office is, of course, abolished in counties having adopted this primary election law.

Section 13 of this direct primary law provides: "Vacancies occurring after the holding any primary, or through failure to nominate shall be filled by the party committee \* \* \* \* \* by the chairman of said committee filing a nomination paper filling such vacancy."

It seems clear to me that if the democratic party were not to make any nominations at the primary election, at all, for any of the offices to be filled at the general election following there would be no vacancies occurring after the holding of the primary through failure to nominate which could be filled for it would have no ticket, but where party candidates are actually nominated under the direct primary law for certain offices, the Central Committee of the party are authorized and empowered to fill vacancies on the ticket occasioned through failure to nominate under the provisions of Section 13 above quoted. If the Democratic party were to make no nominations at all by election, under this law, there would be no party ticket, and therefore no vacancies to fill by that party, and Section 13 of said act would be of no avail, for the law provides, as above shown for nomination, either by the direct primary method or by the filing of a petition.

If the Democratic party makes nominations for certain, though not all of the county offices, under this direct primary law, the Central Committee cannot, in my judgment, be prevented from making nominations to fill vacancies on the ticket arising through failure to nominate under the provisions of Section 13 of said act.

This is a lamentable condition of affairs, but can only be cured by additional legislation upon the subject.

Yours Respectfully,

ALBERT J. GALEN,  
Attorney General.