

**Judicial Offices, Nominations for How Made. Nominations for Judicial Offices, What to Contain. Petition, Sufficiency Of.**

Nominations for judicial offices shall be made as provided for in Section 524, Revised Codes (Section 1313, Political Code).

A petition for nomination for a judicial office shall contain the name of the person nominated, his residence, business, business address, and the office for which he is nominated. The number of signatures upon such petition must be not less in number than five per cent of the number of votes cast for the

successful candidate for the same office at the next preceding election, whether the candidate be for state, county, township, municipal or any other political subdivision of state or county.

Helena, Montana, September 19, 1910.

Hon. A. N. Yoder,  
Secretary of State,  
Helena, Montana.

Dear Sir:—

Replying to your request for an opinion as to what certificates of nomination for judicial offices shall contain, and as to whether you should satisfy yourself that the certificates contain the required information, I would say that Chapter 113, Laws of 1909, provides:

“Sec. 1. Hereafter all nominations for judicial offices shall be made only in the manner provided by Section 1313 of the Political Code of the state of Montana.

Sec. 2. No officer, authorized or required by any statute of this state to file any papers or certificates reciting the nomination of candidates for public office, shall receive for filing, or place on file, any certificate or paper reciting the nomination of any candidate for any judicial office except such nomination be made pursuant to the provisions of said Section 1313 of the Political Code.”

Section 524 of the Revised Codes (1313 of the Political Code) provides:

“Candidates for public office may be nominated otherwise than by convention or primary meeting in the manner following:

A certificate of nomination, containing the name of a candidate for the office to be filled, with such information as is required to be given in certificates provided for in Section 522 (1311) of this chapter, must be signed by electors residing within the state and district, or political division in and for which the officer or officers are to be elected, in the following required numbers:

The number of signatures must not be less in number than five per cent of the number of votes cast for the successful candidate for the same office at the next preceding election whether the said candidate be state, county, township, municipal or any other political division or subdivision of state or county; but the signatures need not all be appended to one paper. Each elector signing a certificate shall add to his signature, his place of residence, his business and his business address. Any such certificate may be filed as provided for in the next preceding section of this chapter, in the manner and with the same effect as a certificate of

nomination made by a party convention or primary meeting."

Sec. 522 of the Revised Codes (Section 1313, Political Code) provides that the certificate of nomination must be in writing, and must contain the name of each person nominated, his residence, his business, his business address, and the office for which he is named, and must designate in not more than five words the party or principle which such convention or primary meeting represents.

In my opinion, before you are authorized to file any such certificate of nomination, you should determine that the certificate contains the information above specified, and that it bears the signatures of electors not less in number than five per cent of the number of votes cast for the successful candidate for the same office at the next preceding election.

Harris v. King, 109 N. W. 644.

The words "for the same office at the next preceding election" would, therefore, refer to the last vacancy upon the supreme bench for the office of "chief justice," and would be determined by the vote cast for Hon. Theodore Brantly at the election held in 1904, he being the successful candidate for the same office at the next preceding election.

Certificates of nomination to be filed with the secretary of state must be filed not more than sixty days and not less than thirty days before the day fixed by law for the election. These sections appear to be mandatory in our opinion, and if the certificate of nomination does not substantially conform thereto, you should refuse to file the same and so notify the proposed nominee.

If the petition appears in manner and form as prescribed by the statutes referred to, and contains at least five per cent of the total vote cast for the successful candidate for the office of chief justice in the election held in 1904, then you should receive and file same and certify such nomination as prescribed by Section 528 of the Revised Codes of 1907. However, I do not believe it devolves upon you, nor do I see how it would be possible for you to ascertain and determine who of the signers of such petitions are qualified electors, therefore, if the petition appears to contain the requisite number of signers in form as required by the statute you should file same, and thereafter the question of the qualification of signers may properly be considered and decided by the courts in the event of the question arising.

Yours very truly,

ALBERT J. GALEN,  
Attorney General.