

Nomination, of Candidates. Primary Election Law, Parties, Creation of New. New Parties, Creation of.

A new party cannot be created by merely nominating candidates designating them as belonging to some party not then existing.

June 19, 1914.

Hon. W. M. Black,
County Attorney,
Shelby, Montana.

Dear Sir:

I am in receipt of your letter, submitting the question "relative to the party name under which a candidate must file his petition for nomination."

From the subsequent statements in your letter the question appears to be directed toward the combination of two or more parties now existing so as to form a new party. The primary election law, as well as the general election law deals principally with political parties existing, rather than with individual candidates. One of the primary objects of the primary election law appears to be to prevent combinations and towards a swapping between political parties, and therefore, compels each party to stand under its own heading and on its own platform. To deal with a party, that party must necessarily first exist. The records here do not disclose that any party exists in the State of Montana known as the "Republican-Progressive" or "Progressive-Republican" or "United Republican Party." As to those two organizations, the record discloses that there is a Progressive party, and a Republican party but any combination whatsoever which would have the effect of calling into being a new party, is not of record here. The general election law, Section 545, Revised Codes, as amended by Chapter 60, Laws 1911, prescribed the form of ballot to be used at the general election, and among other provisions, it states:

"The list of candidates of the several parties shall be placed in separate columns of the ballot."

If, therefore, by some means, not now apparent, a new party, such as you indicate in your letter, is called into existence for the purpose of the primary election, some one might raise the question prior to the election that no such party existed, and therefore, the clerk would have no authority to print the names of such non-existing party upon the official ballot, and if sustained, of course, the so-called newly cre-

ated party would not be represented on the official ballot voted at the general election. My judgment is that a party cannot be created in the manner indicated. It is probable that candidates may still be nominated by petition, as indicated in Section 524 of the Revised Codes, but this is a matter to be determined by the candidate. You, therefore, are advised that there is no provision of law for the recognition of a new political party until after that party has been created in some manner recognized by law. Of course, if this party has been heretofore created, it stands as a political party, but I have no knowledge of any such creation, and unless there has been one, it certainly cannot be placed on the ballot under the head of "political party."

It will be further noticed that Section 8 of the Primary Law provides as follows:

"Every political party shall nominate all its candidates for public office under the provisions of this law, and not in any other manner; and it shall not be allowed to nominate any candidate in the manner provided by Sec. 521 of the Revised Codes of Montana, 1907. Every political party and its regularly nominated candidates, members and officers, shall have the sole and exclusive right to the use of the party name and the whole thereof, and no candidate for office shall be permitted to use any word of the name of any other political party or organization than of that by which he is nominated. No independent or non-partisan candidate shall be permitted to use any word of the name of any existing political party or organization in his candidacy * * *"

For the reasons above stated, party nominations cannot be made under any name which includes "any word of the name of any political party or organization than of that by which he is nominated, and no independent or non-partisan candidate shall be permitted to use any word of the name of any existing political party or organization in his candidacy."

Yours very truly,

D. M. KELLY,
Attorney General.