

Political Party, Conventions. Delegates, to Conventions of Political Parties. Qualifications, of Delegates to Party Conventions.

By party usage and custom political conventions and committees are the sole and exclusive judges of the qualifications of their members and may refuse to seat a person as a delegate who does not possess the necessary qualifications.

September 19, 1914.

Hon. C. R. Tisor, County Attorney,
Miles City, Montana.

Dear Sir:

I am in receipt of your letter of the 17th instant, setting forth that you have received a communication from Mr. John T. Hamilton of Miles City, wherein Mr. Hamilton desires to know whether he is qualified to serve as a member of a political committee, in view of the fact that he holds a federal appointive position, under the Department of the Interior, in the United States Land Office at Miles City, Montana? You request that I give my official opinion upon this matter.

The law applicable to this case is found in Section 21, of the Corrupt Practice Act, which reads as follows:

"No holder of a public position other than an office filled by the voters shall be a delegate to a convention for the election district that elects the officer or board under whom he directly or indirectly holds such position, nor shall he be a member of a political committee for such district."

The phrase "public position" is here used in a generic sense, and includes elective as well as appointive offices, whether national, state, county or municipal. Persons holding elective offices are expressly exempt, and may act as delegates to conventions, and be members of political committees, and a person holding an appointive position is not disqualified from acting as a delegate to a political convention, or serving as a member of a political committee, unless the district which he serves elects the officer or board under which he directly or indirectly holds his position. Usually an appointment to a federal position, such as that held by Mr. Hamilton, is made upon the recommendation of one or more of our members in Congress, and without which recommendation the appointment would not be made. In such a case it seems clear that the appointee holds his position indirectly to or

under an elective officer, in which case, he would be disqualified. By party usage and custom, political conventions and committees are the sole judges of the qualifications of their members, and may refuse to seat any person as a delegate or member who does not possess the necessary qualifications.

I am, therefore, of the opinion that Mr. Hamilton's case can be properly decided by the convention or political committee to which he seeks membership.

Yours very truly,

D. M. KELLY,
Attorney General.