

Election Law, Construction of. Ballot, Form of. Vacancies, How Filled. County Clerk, Duty of in Preparing Ballot. Political Parties, When May Fill Vacancy.

It is the duty of the county clerk to issue a notice of nomination to a person whose name has been written upon the primary nominating ballot by the elector, and who receives the highest number of votes.

It is the duty of the county clerk to have such name printed on the official ballot for use at the general election.

Vacancies occurring in offices which were in existence at

the time of the primary election can be filled by political party or committees, only when caused by removal or death of the nominee.

September 19th, 1914.

Hon. Justin M. Smith,  
County Attorney,  
Bozeman, Montana.

Dear Sir:

I am in receipt of your letter submitting the following questions:

"Is it the duty of the county clerk to issue a notice of nomination to a person whose name has been written on the Primary nominating ballot by an elector and who receives the highest number of votes?"

"Is it the duty of the county clerk to have such name printed on the official ballot in the general election in November?"

The third question, not submitted by you, but now in the office for answer, is:

"How may vacancies on a party ticket, which have occurred subsequent to the primary election be filled?"

The first question submitted must be answered in the affirmative. It has heretofore been decided by this office, in a letter addressed to you under the authority of *Holiday vs. Leary*, 43 Mont., 157, and the various provisions of the constitution, that an elector at the primary election has the authority to write in under any party designation, the name of any candidate for whom he wishes to vote. Having this right so to vote, he is entitled to have his vote counted, and the candidate receiving the highest number of votes, whether his name is printed on the ballot or written in by the elector, must be declared the nominee of that party;

2. It is the duty of the clerk in making up the official ballot to have printed thereon the names of the party nominees, but where it appears by the returns made, that the same candidate is the nominee of two or more parties, then the clerk in making up the official ballot, must be guided by the provisions of Section 545, R. C., wherein it is provided, that if the same person is nominated for the same office by two or more parties at the same time, the candidate must elect under which party designation his name shall be printed on the official ballot, and if he fails to so elect, the clerk must make the election for him, and his name can be printed on the official ballot but once, and under but one party designation.

3. There is but two cases where a party as such, may fill a vacancy on its ticket, namely, where the candidate has removed from the central district, or has died. The law is emphatic in stating that the filling of vacancies by political parties may be made in such cases, "but in no other case." Sections 16 and 32, Primary Election law, where the vacancy occurs otherwise than by death or removal, there is no way of filling it, under the party designation, but an independent candidate may be nominated, as provided in Section 524, Revised Codes,

though such independent candidate cannot use the name of any party. Section 8 of the Primary Election law,—or the electors at the general election, may write in the name on the official ballot, or may use pasters; authority for both these methods is given in said Section 545, Revised Codes. This section has not been repealed, nor modified by the Primary Election law.

We enclose herewith copy of an opinion addressed to Hon. J. L. Slattery, County Attorney of Glasgow, under date September 16th, 1914.

Yours very truly,

D. M. KELLY,  
Attorney General.