

Primary Nominating Election, Candidates. Candidates, Unsuccessful, May File Independent Nomination. Nominating Petition, Qualifications of Signers on.

An unsuccessful partisan candidate for nomination may afterwards be nominated by petition as an independent candidate. It is legal for persons who have signed nominating petitions for the primary election to afterwards sign petitions of independent candidates for the same office.

September 21, 1914.

Hon. Vard Smith,
County Attorney,
Livingston, Montana.

Dear Sir:

I am in receipt of your letter of the 18th instant, wherein you request my opinion upon the following propositions:

"First: Can an unsuccessful partisan candidate for the nomination to a county office on the ticket of a recognized political party, file a petition as an independent candidate and have his name as such candidate printed upon official ballots to be used at the next general election, and,

"Second: Is it legal for electors who have signed the nominating petition of a successful or unsuccessful candidate seeking nomination to a county office upon a party ticket, to afterward sign a petition or certificate of nomination of an independent candidate for the same office at the same election?"

Upon the first question you are advised that the direct primary law provides the exclusive method of nominating political party candidates. Section 8 declares that "every political party shall nominate all its candidates for public office under the provisions of this law, and not in any other manner." The same section gives to every political party and its regularly nominated candidates, members and officers, the sole and exclusive right to the use of the party name, and that 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. The primary law supersedes the convention system for nominating political party candidates, but goes no further. Section 524, Revised Codes of 1907 is still in force, and prescribes the method to be followed by independent, non-partisan candidates for public offices. The mere fact that a person heretofore has been a partisan candidate, does not disqualify him from becoming an independent candidate for the same or other office. There is no law requiring party allegiance for any prescribed period. Any one is at liberty to change his politics, and to forsake or "bolt" his party at any time, becoming amenable alone to public judgment. It is then his privilege to become an independent candidate for office, and the only restriction placed upon his candidacy, is that he must not use any word of the name of any existing political party or organization in his candidacy.

State vs. Rottwitz, 18 Mont. 502;

State vs. Reek, 18 Mont. 557.

If the independent candidate files, or if there be filed in his behalf a sufficient petition, his name must, in a separate column provided for the purpose, be printed upon the official ballot at the general election.

The answer to your second question is found in Section 12 of the primary law, which declares that no one who is not a qualified elector shall be qualified to join in signing any petition for nomination, "but this shall not be construed to prevent any member of any party from signing a petition for the nomination of any independent or non-partisan candidate after the primary nominating election, nor shall it be construed to prevent any qualified elector from signing petitions for more than one candidate for the same office on one party ticket."

It will thus be seen that the only restriction against signing the petitions for independent or non-partisan candidates, by qualified electors irrespective of political faith, is that such petitions, if signed at all, must be signed after the primary nominating election.

Yours very truly,

D. M. KELLY,
Attorney General.