

Candidates, Who Nominated, Primary Election. Nominee, Primary Election, Who Is. Election, by Candidate When Nominated by Two Parties. Clerk, Duty of in Declaring Nominee. Ballot, When Name to Be Put on.

It is the duty of the clerk to declare the candidate who receives the highest number of votes to be the nominee of the party, and to print his name on the official ballot.

Where the same person has been nominated by two or more parties, he may elect under which party designation he wishes his name to be placed on the ballot, or if he fails so to do, the clerk may elect for him.

The same candidate's name cannot be placed on the ballot under more than one party designation.

October 8th, 1914.

Hon. Charles P. Cotter,
County Attorney,
Townsend, Montana.

Dear Sir:

I am in receipt of your letter of the 7th instant, submitting the question:

"If a candidate receiving the highest number of votes at the primary election, refuses to accept the nomination, may the candidate who received the next highest number be declared the nominee?"

Section 23 of the Primary Election Law requires the votes to be canvassed and makes it the duty of the county clerk to declare the person receiving the highest number of votes the nominee of the party.

"The person having the highest number of votes for nomination to any office shall be deemed to have been nominated

by his political party for that office."

In the case stated by you it appears from the returns made to the county clerk that B received the highest number of votes as a candidate on the Republican party, and also that B received the highest number of votes as a candidate of the Democratic party. H received the next highest number of votes as a candidate of the Democratic party. B elected to accept the nomination as a candidate of the Republican party. The specific question submitted, then, is, may H be legally regarded as the nominee of the Democratic party?

The clerk is bound by the returns, and if those returns show that the same person has been nominated by two or more parties, he can only so declare the result, and in view of the fact that the person receiving the highest number of votes must be declared to be nominee, the clerk has no authority to declare anyone else the nominee. In the case stated by you, it appears that the same person has been nominated by two different parties for the same office at the same time. Section 545, Revised Codes, which gives direction for the preparation of the official ballot to be used at the general November election, contains this statement, in speaking of nominees:

"If he was nominated by more than one party or convention at the same time, shall * * * file * * * a written election, indicating the party designation under which he desires his name to be printed on the ballot. * * * If he shall fail or neglect to so file such an election, the officer with whom the certificate of nomination is required to be filed shall place his name under the designation of either of the parties by which he was nominated."

The question stated must be answered in the negative.

Yours very truly,

D. M. KELLY,
Attorney General.