

Candidate, When Does a Person Become. Corrupt Practice Act, When Attaches to Office Seeker. Office, Candidate for When Becomes. Public Officer, When One Becomes Candidate For.

A person becomes a candidate for office when he has signed the petition required by law, and filed the same with the proper officer or has transmitted the same for filing,

but candidate cannot withhold filing his certificate as a subterfuge for the purpose of making expenditures in the meantime in furtherance of his candidacy after the certificate is filed.

March 14, 1916.

Hon. A. M. Alderson,
Secretary of State,
Helena, Montana.

Dear Sir:

The following question has been submitted to this department:

"When does a person become a candidate, within the meaning of the Corrupt Practices Act of the State of Montana?"

The word "candidate", according to lexicographers, means:

"One who seeks or aspires to some office or privilege, or who offers himself for the same."

But this definition is very general and indefinite. A man may be a candidate long before he is a nominee, and the time is wholly uncertain when he becomes such candidate in the absence of statutory determination thereof. As was stated in a noted case:

"He may in his own mind be in that venturesome state for many years before anyone else is apprised of such intention, and in such case his ambition would not make him a candidate. Nor does he become such if he merely counsels with his friends on the subject. His candidacy must be manifested by some act of his own, the gist of which is that he holds himself out as a candidate. Very often he crosses the Rubicon when he publishes his formal announcement in the local press, to an organization, or in any public manner. This, however, is not ordinarily necessary."

In the absence of statutory provisions, he may become a candidate by soliciting votes without any declaration, or he may be elected to office without ever having been a candidate at all. In the very nature of things it is familiar experience that in the absence of statutory prescription on the subject, the time when a man becomes a candidate is extremely vague and indefinite. In view of the indefiniteness as to such time under the ordinary convention system of nominations, and in view of the fact that the Corrupt Practices Act is highly penal, it is important as a matter of public policy, and essential to its successful administration, that the time at which its provisions go into effect should be definitely determined. The people may reasonably be regarded as having intended to remedy this defect when they legislated on the subject of direct primaries. The Corrupt Practices Act itself defines the word "candidate", as follows:

"'Candidate' shall apply to any person whose name is printed on an official ballot for public office, or whose name is expected to be, or has been presented for public office with his consent for nomination or election."

The Primary Election Law requires all candidates for public office to sign and file with the proper officer a petition within the time required by law, in which petition he is required to state in effect that he is a candidate, and a promise that if he is nominated he will accept such nomination and will not withdraw. After filing this petition with the necessary petitions signed by electors, he is entitled to have his name placed upon the official ballot, and he is not recognized as a candidate under the law until such petition is filed. The provisions in the Corrupt Practices Act, in order to make the party a candidate, requires "his assent". The only means known to the law by which he can give his assent, is by the filing of the petition required by the provisions of the Primary Law, for until that petition is filed, he is not known to the law as a candidate. And until the law recognizes him as a candidate, he is certainly not a candidate within the meaning of the law. Hence, the conclusion seems to be inevitable that he is a candidate when he has filed his petition with the proper officer, and not prior to that time. It is however worth while to note that under the primary law, the candidate before or at the time of beginning to circulate any petition for obtaining signatures of electors, must send a copy of the petition signed by him to the proper officer for filing. After he has signed this petition and deposited it in the mail or placed it beyond his jurisdiction, it may be constructively, at least, within the possession of the filing officer, so that acts done by the petitioner would be construed as having been done by him after he became a candidate. So long, however, as he retains possession of the petition, it is within his jurisdiction and he may destroy it. It would, therefore, be at least safe for the person to regard himself as a candidate from the moment he has properly signed his petition and deposited the same for delivery to the filing officer. It is also worth while to note that the Corrupt Practices Act contains a great many prohibitions which apply to the individual both before and after he becomes a candidate. These provisions of the law are not in any manner dependent upon, nor affected by, the filing of the petition, because they relate to the individual rather than to the candidate. It is likewise true that a person knowing that he is going to be a candidate, cannot resort to the subterfuge of making payments of money, or otherwise, prior to the time when he makes his filing, to be used in his interest after he has actually become a candidate, for by becoming a candidate, he must give an account of all expenditures made for the purpose of furthering his election or nomination without regard to when the payments to the expending party were made. The question has been thoroughly discussed by the Supreme Court of Minnesota in analyzing the Corrupt Practices Act of that State, which is substantially the same as ours. The conclusion reached by that court is clearly expressed in the syllabi of the case, as follows:

"Within the meaning of the Corrupt Practices Act, a political aspirant becomes a candidate at the time of filing his affidavit of intention of becoming candidate for a specified office. The verified statement which he is required by law

to file need not include items of expense incurred or paid anterior to the time of filing his affidavit.”

State ex rel Brady, v. Bates (Minn.) 112 N. W. 1026 et seq.

Yours very truly,

J. B. POINDEXTER,

Attorney General.