

Withdrawal, Candidate for Office. Candidate, Withdrawal of. Elector, Withdrawal of Candidate for. Presidential Elector, Candidate for Withdrawal of. Officer, Presidential Elector is.

A presidential elector is an officer, and as such, after receiving a nomination therefor, may not withdraw or decline the nomination, or resign, and cannot thereafter at the regular primary nominating election be legally nominated for another office.

August 2, 1916.

Hon. R. G. Wiggenghorn,
County Attorney,
Red Lodge, Montana.

Dear Sir:

I have your letter of recent date, wherein you present the following for my consideration:

"May I have your opinion upon the following state of facts: A man has been nominated as a presidential elector at the time of the primary election held in this state, April 21st, 1916. The candidate made a statement in his petition for nomination as follows:

'If I am elected to the office as presidential elector at the primary nominating election to be held April 21st, 1916, I will qualify as such officer, and if I am elected I will uphold the constitution and laws of the United States, and of the State of Montana, and as such officer and delegate, will, to the best of my judgment and opinion, faithfully carry out the wishes of my political party as expressed by its voters at the time of my election.'

The candidate now desires to file his petition for a legislative office.

1. Is a presidential elector an officer, so as to preclude the nominee for presidential elector to run for any other office, thus having his name appear twice upon the ballot?

2. If so, can the nominee, notwithstanding, withdraw or decline the nomination, or resign, and after such, can he legally be nominated for another office?"

Your first question I think may be dismissed without discussion, for in my opinion there can be no doubt but that the presidential elector is an officer.

With regard to the second question, I will say that having received a nomination for such office, I am of the opinion the nominee may not withdraw or decline the same, or seek nomination to another office. In adopting the present primary system for making nominations for public offices, our Supreme Court held that the people thereby intended to, and did, adopt the Oregon system, with the single qualification that in presidential years, two primary nominating elections are to be held (*State v. Duncan*, 145 Pac. 1111). In the case cited, it is pointed out that the Oregon system is embraced in one law, consisting of an original enactment, the equivalent of our biennial primary law, and an amendment thereto, of which our preferential presidential primary law is the counterpart. This latter feature of the system was adopted by our people as an original measure and standing alone is wholly devoid of any method of procedure to carry it into effect. No mode or manner is provided to control, carry on, or regulate the elections therein provided, except the declaration of Section I:

"All laws pertaining to the nomination of candidates regisraition of voters and all other thing incident and pertaining to the holding of the regular biennial nominating election, shall be enforced and effected."

This is the mandate to look elsewhere for the necessary machinery to carry the law into effect, for, in the absence of statutory provisions regulating the mode and manner of elections, the people, though entitled under the Constitution to elect their own officers, cannot exercise such right.

State ex rel Rowe v. Kehoe, 49 Mont. 582.

Before the time the preferential presidential primary law was adopted, the procedure for the nomination of candidates was contained in the Code (Sec. 521 et seq., R. C. 1907). The biennial primary law, and the preferential presidential law were adopted at the same time. They were evidently intended as companion measures, the latter dependent upon the former for details of regulation and procedure, and for definitions of the rights, duties, obligations and liabilities of candidates. Were it otherwise, we would have the anomalous condition of code regulations for the preferential presidential law and initiative regulations for the biennial primary law. Whatever may have been the technical legal effect of adopting the presidential primary law at the same time as the biennial primary law was adopted, as regards procedure, and the duties and obligations of candidates, I am constrained to, and do hold that the law now governing candidates under the presidential law is that contained in the biennial

primary law, under it the candidate for nomination pledges the people that if nominated he will not withdraw and if elected he will qualify as such officer. By way of digression I may state that the nominee of whom you make mention evidently thus interpreted the law, for in his petition for nomination, he made an equivalent declaration. Were it permitted this nominee now to withdraw, there would be no way to fill the vacancy created for under the express provisions of Section 32 of the biennial primary law, the county central committee may only make nominations to fill vacancies where the vacancy is caused by death or removal from the district, and not otherwise; and under the provisions of Section 16, it is enacted that the Code provisions (Section 529, 530, R. C. 1907) shall only apply in case of the death of the candidate, or his removal from the state, county or his electoral district before the date of the ensuing election, and in no other case. The conclusion is obvious that the nominee you mention may not withdraw unless he removes himself from his electoral district, which, of course, would disqualify him from running for a legislative office. That he may not legally present himself as a candidate for a legislative office if he remains in his district, is manifest from the fact that under the law no candidate for public office may have his name appear upon the official ballot more than once at an election.

State ex rel Metcalf v. Wileman, 49 Mont. 436.

This condition would necessarily ensue if he were permitted now to file his petition for, and secure, a nomination for a legislative office at the forthcoming primaries.

You are, therefore, advised that in my opinion you should instruct your county clerk to refuse to receive or file the nominating petition tendered by the candidate in question.

Yours very truly,

J. B. POINDEXTER,

Attorney General.