

**Political Party, Nomination by. Nomination, by Political Party. Candidates, How Nominated. Primary Election, Nominations at. Vacancies, How Filled.**

1. Central Committee of a political party cannot fill a vacancy, except where the same is caused by death or removal.

2. A person receiving the highest number of votes at the primary election must be recognized as the nominee although his name may have appeared on the printed ballot of some other party.

September 13th, 1916.

Hon. J. W. James, County Attorney,  
Anaconda, Montana.

Dear Sir:—

I am in receipt of your letter of the 12th instant, submitting the following questions:

1. If a political party has no candidate at the primary election for a certain office, and none is nominated, may the Central Committee of such party fill the vacancy by selecting a party candidate for such office?

2. If two persons are candidates for the same office, of the same party, at the primary election, and the

opposing party has no candidate, but the minority candidate receives the greater number of the votes of such opposing party by having his name written in by electors, is he the nominee of such opposing party?

Answering 1., Section 8 of the Primary Law provides:

"Every political party shall nominate all its candidates for political office under the provisions of this law, and not in any other manner."

and Section 32 of such law relating to the filling of vacancies provides that the same may be filled by the Central Committee "where such vacancy is caused by death or removal from the electoral district, but not otherwise." Under these provisions of this law, a party candidate may not be nominated in any manner other than through the medium of the primary election, except in the two cases named, to-wit: death or removal. It therefore follows that the Central Committee cannot fill the vacancy caused by a failure to nominate; see also Section 16.

2. Under the provisions of Section 23 of the Primary Election Law, a candidate receiving the highest number of votes is the nominee of the party, and it is immaterial that he is not of the same political faith of the party nominating him, for there is no prohibition in the law against the electors nominating whomsoever they please upon any ticket. Hence, the candidate receiving the highest number of votes must be recognized as the nominee and so reported by the County Clerk.

Yours very truly,

J. B. POINDEXTER,

Attorney General.