

**County Clerk—County Officers — Elections — Filing—
Nominating Petitions—Petitions—Offices.**

In the year 1924 the last day for filing nominating petitions for county offices is July 27th.

C. T. Stewart, Esq.,
Secretary of State,
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My dear Mr. Stewart:

You have requested my opinion relative to the last day on which nominating petitions may be filed for county offices for the primary nominating election to be held on August 26, 1924.

Section 644, Revised Codes of 1921, as amended by Chapter 133, Laws of 1923, provides:

"for other offices to be voted for in only one county, or district or city, every such petition shall be filed with the County Clerk or City Clerk as the case may be, **not less than thirty days before the date of the primary nominating election.**"

The primary nominating election this year will be held on August 26th and, to determine the last day for filing petitions, one must count back thirty days from, but not including, August 26th. In this manner, July 27th is the thirtieth day before the date of the primary nominating election.

The law says "not less than thirty days," but the "days" as here used refers to a day as a unit of time, and not to an aggregation of a certain number of hours, minutes or seconds. As here used, it must be taken as a whole. As was said in the case of *Cosgriff v. Board of Election Comm'rs (Cal.)*, 91 Pac. 98:

"The fractions of the days are no more taken into consideration than are the fractions of the seconds. The consequence is that every day, and every part of that day, is, by this rule, one day before every part of the succeeding day. The last moment of any day is, in contemplation of the law in such cases, one day before the first moment of the next day, although the elapsed time is infinitesimal. The rule is strictly one of convenience. Any other method of computation would require an accurate account to be kept of the exact hour, minute, and second of the occurrence of the act to be timed, would produce endless confusion and strife, and would prove impolitic, if not wholly impracticable."

In the foregoing case, the statute provided that a certificate of nomination may be filed "not more than fifty days **nor less than twenty days** before the day of election."

It is to be observed that the language of the California statute "not less than" (certain number of days) is identical with the language of our statute.

The Court in the foregoing case further said:

"By the method stated, it is clear that the offer of October 17th was in time. Manifestly, on that theory, the 5th day of

November would be one day before the 6th day of that month, and not less than one day before, since the number 5 is one less than 6. So, by counting the consecutive days backward from November 6th, it will be found that October 17th was 20 days, and if 20 days, then not less than 20 days before November 6th. This is what is contemplated by Section 12 of the Political Code, declaring that in computing time by days the first day is to be excluded and the last day included. Excluding November 6th, the first day, we find October 17th to be the twentieth day, or the last day of the period, and as it is to be included in the count, it must be counted as part of the period. Thus, it makes the full number of 20 days before the day of the election, and it cannot be 'less than 20 days before' that day."

In the case of *State ex rel. Anderson v. Falley* (N. D.) 83 N. W. 913, the same rule of computation of time was employed. It was there held that the fact that the thirtieth day fell on Sunday would not alter this rule.

See also *Seawell v. Gilford* (Ida.), 125 Pac. 182, Ann. Cas. 1914A 1132.

The filing of a certificate of nomination is a mere ministerial act and would not be illegal by reason of the fact that it was filed on Sunday.

State ex rel. Hay v. Alderson, 49 Mont. 387.

The statutes on the subject of the time for filing certificates of nomination are usually held to be mandatory. This is true where the words of the statute are "not less than" a certain number of days before the day of election.

Hollon v. Center, 102 Ky. 119, 43 S. W. 174;

Brodie v. Hook, 121 S. W. 979;

Price v. Lush, 10 Mont. 61, 24 Pac. 749. 9 L. R. A. 467;

State v. Hays, 31 Mont. 227, 78 Pac. 301;

State v. Falley, 83 N. W. 913.

It is, therefore, my opinion that July 27th is the last day for filing petitions for nomination to county offices.

Very truly yours,

WELLINGTON D. RANKIN,

Attorney General.