

**Ballots—County Clerk—Candidates—Primary Elections
—Independent Candidate.**

A candidate desiring to run for office independently cannot have his name placed on the primary election ballot, but must follow the procedure of Section 615, Revised Codes of Montana, 1921, and thereupon is entitled to have his name appear as an independent candidate for the office on the official ballot for the general election.

M. M. Marcy, Esq.,
County Clerk and Recorder,
Polson, Montana.

My dear Mr. Marcy:

You have requested my opinion whether a petition for nomination to office as an independent candidate can be filed and the name of such candidate be printed on the ballot for the primary nominating election.

Section 640, R. C. M. 1921, as amended by Chapter 133, Laws of 1923, reads in part as follows:

“Any person who shall desire to become a candidate for nomination to any office under this law shall send by registered mail, or otherwise, to the Secretary of State, County Clerk, or City Clerk, a petition for nomination, signed by himself, accompanied by the filing fee hereinafter provided for, and such petition shall be filed and shall be conclusive evidence for the purpose of this law that such elector has been a candidate for nomination by his party.”

The section then provides for the filing fee, and the next Section 641, as amended by said chapter, prescribes the form of such petition.

Section 640 was originally a part of initiative measure enacted by the people of the state at the general election of November, 1912, and being Section 9 of that Act. Section 8, which is now Section 639, R. C. M. 1921, reads in part:

“Every political party shall nominate all its candidates for public office under the provisions of this law, and not in any other manner; and it shall not be allowed to nominate any candidate in the manner provided by Section 612 of this code.”

Section 612 applies to nominations by conventions, and it has been held that this method of nomination is open only to new parties organized after the holding of the primary election.

State ex rel. Mills v. Stewart, 64 Mont. 453, 210 Pac. 465.

Section 615, R. C. M. 1921, provides a method by which persons may be nominated for public office by petition, which petition must bear a number of signatures not less in number than five per cent of the number of votes cast for the successful candidate for the same office at the next preceding election.

When a candidate is nominated in this manner he is entitled to have his name appear on the official ballot for the general election. In other words, such petition nominates him and places him in the same status as candidates nominated at the primary election.

A candidate running independently is not a candidate of any party, and therefore would not be entitled to have his name appear on the primary ballot for nomination under the provisions of Section 631, et seq., R. C. M. 1921, as amended, since the direct primary law applies only to party nominations.

Our statutes do not define a "political party," but it is defined by Webster's dictionary as: "A number of persons united in opinion or action, as distinguished from or opposite to the rest of a community or association; * * * one of the parts into which a people is divided on questions of public policy."

The Standard dictionary defines the term as: "A body of people contending for antagonistic or rival opinions or policies in a community or society, especially one of the opposing political organizations striving for supremacy in a state."

In the case of *State ex rel. Mills v. Stewart*, 64 Mont. 453, the Court said:

"Political party results from voluntary association of electors, and not from operation of law, and, in the absence of legislative regulations, possesses plenary powers as to its own affairs."

In the same case, the Court also says:

"The fact of the filing of a nominating petition for either a municipal or state office by some person who styles himself a Socialist, and who seeks the nomination as a candidate of a Socialist party in itself does not prove the existence of a Socialist party as a political party organization within the state."

In the copy of the nominating petition submitted by you, the candidate announces himself "as an independent." There is no political party in this state known as the Independent party, and the filing of his petition, under the rule of *Mills v. Stewart* above quoted, does not in itself prove the existence of one. On the other hand, the term "Independent" as used by the candidate indicates that he desires to run for the office he seeks independently of all political parties.

It is, therefore, my opinion that a candidate desiring to run for office independently cannot have his name placed on the primary election ballot, but must follow the procedure of Section 615, R. C. M. 1921, and thereupon is entitled to have his name appear as an independent candidate for the office on the official ballot for the general election.

In the case submitted by you, you should, therefore, reject the nominating petition filed by the candidate and return to him the fee tendered to you.

Very truly yours,

WELLINGTON D. RANKIN,
Attorney General.