

Ballots — Candidate — County Clerk — Elections — Expenses—Nomination.

If a person has been nominated for a public office by the electors writing his name in a sufficient number of times upon the ballot at the primary election, provided that the same was with his consent, and provided further that the office for which he has been nominated is one to which a salary attaches, or is one specifically named in Section 10775, Revised Codes of Montana, 1921, he comes within the provisions of Section 10801, Revised Codes of Montana, 1921, and there must be filed by or on his behalf the statement of accounts and expenses relating to nominations required by Section 10776, Revised Codes of Montana, 1921.

Vilroy C. Miller, Esq.,
County Attorney,
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My dear Mr. Miller:

You have submitted to this office for my opinion the question whether a person nominated for public office by the electors writing his name upon the ballot at the primary nominating election must file an itemized statement, as required by Section 10776 of the R. C. M. 1921, in order to have his name printed upon the official ballot for the ensuing election.

Section 10801, R. C. M. 1921, relating to the subject, reads as follows:

"The name of a candidate chosen at a primary nominating election, or otherwise, shall not be printed on the official ballot for the ensuing election, unless there has been filed by or

on behalf of said candidate the statements of accounts and expenses relating to nominations required by this Act, as well as a statement by his political agent and by his political committee or committees in his behalf, if his statement discloses the existence of such agent, committee, or committees."

The statements referred to in said section are those provided for in said Section 10776, which latter section requires "Every candidate for nomination or election to public office, including candidates for the office of Senator of the United States" to file the statement within 15 days after the election at which he was a candidate.

Section 10775 of said Codes defines a "public office" as follows:

"'Public office' shall apply to any national, state, county, or city office to which a salary attaches and which is filled by the voters, as well as to the office of presidential elector, United States Senator, or presiding officer of either branch of the Legislature."

The same section defines a "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."

From these various provisions it will be seen:

1. That only those candidates for public office "to which a salary attaches" and the specific offices set forth in Section 10775 are required to file the statement. An office which pays fees instead of a salary, it has been held by a former Attorney General (Vol. 5, p. 530), is not within the provisions of the above section.

2. That only a "candidate" is required to file the statement. Under the above definition of the word, a candidate for nomination or election is (a) a person whose name is printed on an official ballot for public office, or (b) a person whose name is expected to be or has been presented for public office, with his consent.

In order that a candidate may have his name printed on the ballot at a primary nominating election, he must have filed a petition as required by Chapter 133 of the Session Laws of the Eighteenth Legislative Assembly, which also provides that the effect of such filing is that it "* * * shall be conclusive evidence for the purpose of this law that such elector has been a candidate for nomination by his party."

As the law provides that the name of a person may be printed upon the primary ballot by his express act and consent, and by that alone, the definition of the word "candidate" as expressed in Section 10775, supra, indicates that it not only includes a person who has complied with said Chapter 133, but also persons whose names have been presented for public office with their consent in a manner other

than by complying with said Chapter 133. If the Legislature had intended that only those persons whose names had been printed on the primary ballot should file the statement, there would have been no occasion to define the word "candidate" in any other language than that used in the first part of the definition, to-wit, a person whose name is printed on an official ballot for public office. By the addition of the other part of the definition, it is indicated that the Legislature recognized the fact that a person might be a candidate although his name was not printed on the ballot.

It is common knowledge that persons often become candidates by soliciting the electors to write their names upon the ballots for the particular office they desire. Such persons in their campaign to effect their nomination by this method can and sometimes do employ all the means and methods of campaigning and seeking the nomination that candidates use when they have complied with said Chapter 133 and their names are printed upon the ballot. It was no doubt the intention of the Legislature that persons seeking the nomination to a particular office should be required to file the statement required by Section 10776 whether they sought that nomination by complying with Chapter 133, or by having their names written upon the ballots by the electors. As was said in the case of Adams vs. Lansdon, (Ida.), 110 Pac. 280:

"The contention that a person is not a candidate until after he files his nomination papers is not in accord with the clear purpose and intent of the primary election law. It is provided among other things in Section 14 of said Act that a blank space shall be provided under each official heading in order that a voter may write in the name of a candidate for any office. It is possible under that provision for a person to be nominated for an office who has not been nominated by paying the fee or filing a petition as required under the provisions of Sections 6 and 7 of said primary election law and whose name is not printed on the ballot. And in such a case the candidate thus selected must file an itemized statement of expenditures the same as a person whose name has been placed on the primary ballot by filing the required nomination papers and paying the fee or by petition. As above stated, a person may be a candidate at a primary election whose name is not printed on the ballot. In that case he must secure a sufficient number of electors who will write his name on the ballot on election day to accomplish his nomination. If he succeeds in that manner in securing a sufficient number of votes to nominate him, he will be entitled to have his name certified and placed on the official ballot at the ensuing general election. Such a person would nevertheless be a candidate for nomination and would have become amenable to the requirements of the law and would no more be allowed to violate the penal provisions of the primary law than

the man whose name was legally printed on the ballot; still there would be as many opportunities open for the expenditure of money and making promises for the candidate whose name was not printed on the ballot as to the man whose name is printed on the ballot. The law was intended to apply to all persons who may in any way be candidates to be voted for at the primary election and all such are amenable to the provisions of the law. It is clear to us that a man is a candidate for an office at the time he begins to seek such office or lay his plans to procure the nomination for such office. ***

"When a man is spending his money in employing and sending out workers, or perfecting an organization, or advertising and exploiting himself, or influencing public opinion in his favor or against an opponent, or in numerous other ways that present themselves to the office seeker, for the purpose of increasing and enhancing his ultimate chances of nomination for a given office, he is for all purposes a 'candidate' for such nomination, and the people so understand it."

The Idaho statute did not define the word "candidate" in any manner. Our statute does define it as above quoted, and in the definition it appears to me that the Legislature has by statute given it the same meaning as the Idaho court gave it in the above case.

If a person has been nominated for a public office by the electors writing in his name a sufficient number of times upon the ballot at the primary election, and provided that the same was with his consent, and provided further that the office for which he has been nominated is one to which a salary attaches, or is one specifically named in Section 10775, R. C. M. 1921, it is my opinion that he comes within the provisions of Section 10801, R. C. M. 1921, and that before his name can be printed on the official ballot for the ensuing election there must be filed by or on his behalf the statement of accounts and expenses relating to nominations required by Section 10776, R. C. M. 1921.

Section 10801 further provides that the officer or board entrusted with the preparation of the official ballots shall so far as practicable warn candidates of the danger of the omission of their names by reason of the provisions of said section, but that delay in making any such statement beyond the time prescribed shall not preclude its acceptance or prevent the insertion of the name on the ballot, if there is reasonable time therefor after the receipt of such statements, and of course this should be observed.

Very truly yours,

WELLINGTON D. RANKIN,
Attorney General.