

Candidates—Elections—Nominations—Primaries.

“A,” a regular petitioned candidate for nomination on the Republican ballot, received the Republican nomination at the primary election and also received more votes than “B,” who is not a regular petitioned candidate on the Democratic ticket. “A” qualifies as the Republican candidate and “B” desires to qualify as the Democratic candidate.

Under the facts as stated above “B” was never nominated as the candidate of any political party, and consequently upon “A’s” election to run on the Republican ticket, “B” has no right to qualify as the Democratic nominee.

Geo. A. Westover, Esq.,
County Attorney,
Columbus, Montana.

My dear Mr. Westover:

You have submitted to this office for my opinion the following question:

“‘A’ being a regular petitioned candidate for nomination on the Republican ballot receives Republican nomination at the primary and also receives one more vote than ‘B,’ who is not a regular petitioned candidate on the Democratic ticket. ‘A’ qualifies as the Republican candidate, ‘B’ desires to qualify and appear as the Democratic candidate at the general election and tender his election to so qualify. Now may the County Clerk reject his election to so qualify for the reason that ‘A,’ the Republican candidate, got more votes than ‘B’ on the Democratic ticket?”

The following provisions of the Direct Primary Law appear to me to indicate the correct answer to your inquiry.

By Section 632, R. C. M. 1921, an election is directed to be held “for the purpose of choosing candidates by the political parties * * *” for all elective county officers.

By Section 639 party nominations are required to be made under the provisions of this law and not in any other manner.

By Section 651, as amended by Chapter 133, Laws of 1923, a candidate, who has been nominated upon more than one ticket, is permitted to file a declaration indicating the party designation under which his name shall be printed on the official ballot.

Section 654 provides:

“In all primary nominating elections in this state, under the provisions of this law, the person having the highest number of votes for nomination to any office shall be deemed to have been nominated by his political party for that office.”

Applying the above statutory provisions to the facts submitted in your inquiry, it is my opinion that “B” was never nominated as the candidate of any political party, and that consequently, upon “A’s” election to run on the Republican ticket, “B” has no right to qualify as the Democratic nominee.

Very truly yours,

WELLINGTON D. RANKIN,
Attorney General.