

Candidates—Elections—Fees—Primaries.

A candidate who withdraws is not entitled to a return of the fee paid for filing his petition.

F. A. Ewald, Esq.,
County Attorney,
Great Falls, Montana.

My dear Mr. Ewald:

You have requested my opinion whether a candidate who has filed a nominating petition under Section 641, R. C. M. 1921, as amended by Chapter 133, Laws of 1923, is, upon his withdrawal as such candidate, entitled to the return of the filing fee provided for by Section 640, as amended by the above Act.

Your inquiry does not request an opinion as to the constitutionality of the Act in question, but, since that consideration might, perhaps, be incidentally involved, I assume the Act requiring the payment of a fee for filing petitions for nomination to public office to be constitutional. Such appears to be the weight of authority, although there are contrary holdings based on the alleged unreasonableness, in certain cases, of the fees exacted. (See note to State ex rel. Riggle v. Brodigan, as reported in 54 L. R. A. 1915 B, page 197.)

Section 640, supra, specifies the fees to be paid, in the following language:

"The fees required to be paid for filing such petitions shall be as follows: * * *"

It will be observed that a fee is required to be paid for filing the petition.

The filing of a petition is a ministerial act required to be performed by the Secretary of State, County Clerk, or City Clerk.

The fee having been paid and the service performed, and there being no provision of statute authorizing the return of the fee in case of the withdrawal of a candidate, it is my opinion that the withdrawal by a candidate of his nominating petition gives him no right to a return of the fee paid by him.

I have carefully examined the decisions of other states having primary laws, for authority, either in accordance with or contrary to the opinion here expressed. The only case in point which I have been able to discover is the Nevada case of *State ex rel. Thatcher v. Brodigan*, 142 Pac. 520. In that case the facts were parallel with those presented in your letter. The statute involved was similar to ours, and the Court reached the same conclusion, that the candidate was not entitled to the return of his filing fee upon withdrawal.

Very truly yours,

WELLINGTON D. RANKIN,
Attorney General.