

**Filing Fees—County Commissioners — Elections—Candidates.**

Where an office is abolished by law between the time of holding the primary election and the general election the County Commissioners may refund to the candidate the fee paid for filing his petition for nomination.

Ernest A. Peterson, Esq.,  
County Attorney,  
Bozeman, Montana.

My dear Mr. Peterson:

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

“Is one who was a candidate for the nomination for the office of County Auditor entitled to a return of the fee paid for filing his nominating petition, when by a change of the classification of the county between the time of the primary and the general election the office of County Auditor is abolished?”

Section 640, R. C. M. 1921, as amended by Chapter 133 of the Session Laws of 1923, provides for the payment of certain fees for the filing of petitions by candidates at primary elections. The language of the statute is as follows:

“The fees required to be paid for filing such petitions shall be as follows: \* \* \*”

The filing of a petition for nomination and the acceptance of the fee therefor presupposes the existence of an office and of the privilege of the petitioner to have his name placed on the official ballot at the general election if nominated as the candidate for that office. If, then, after the petition has been filed, the fee accepted, and the petitioner nominated at the primary election as the candidate for the office, the office is abolished, it would be a harsh rule that would work a forfeiture of the fee and deny the petitioner the right to its return.

While the statutes make no provision whatever for a refund of the fee paid, and while it is true that no person is of right entitled to have an office continued for his benefit, it is my opinion that the County Commissioners, under the circumstances, should refund the fee.

Very truly yours,

L. A. FOOT,  
Attorney General.