

Candidates—Tie Vote—Primaries—Elections.

When two persons receive a tie vote for district judge at the primary election the secretary of state shall proceed under section 655 R. C. M. 1921 to determine which of the two is the nominee.

August 6, 1928.

Hon. John E. Erickson,
Governor of Montana,
Helena, Montana.

My dear Governor Erickson:

You have called my attention to the situation appearing in the fifth judicial district, as appears from the certificate of the abstract of votes presented to you by the secretary of state.

It appears that in this district judges Lyman H. Bennett and Henry G. Rogers received the nomination on the republican ticket. There were no candidates for office on the democratic ticket. The following names, however, were written in by the voters voting the democratic ticket, to-wit: George R. Allen, Lyman H. Bennett, Henry G. Rogers, Kelly, Melton and M. H. Parker. Mr. Parker received 74 votes, George R. Allen and Henry G. Rogers tied for second place, each receiving 38 votes.

You desire my opinion as to whom certificates of nomination should be issued on the democratic ticket.

In this district two judges are to be elected. It follows, therefore, that M. H. Parker is one of the nominees on the democratic ticket. As to whether George R. Allen or Henry G. Rogers is to be the other nominee on the democratic ticket must be determined by the provisions of section 655 R. C. M. 1921, which provides as follows:

“In case there shall be no choice for nomination for any office by reason of any two or more persons having an equal and the highest number of votes of his party for nomination for either of said offices, the secretary of state shall immediately give notice to the several persons so having the highest and equal number of votes to attend at his office, either in person or by attorney, at a time to be appointed by said secretary, who shall then and there proceed to publicly decide by lot which of said persons so having an equal number of votes shall be declared duly nominated by his party; and the governor shall issue his proclamation declaring the nomination of such person or persons, as above provided.”

Should the result of this procedure show that Henry G. Rogers is the nominee also on the democratic ticket, it is then incumbent upon him to indicate the party designation under which his name is to be printed on the official ballot for the general election, and if he fails to make an election his name shall be printed upon the party ticket for which his nominating petition was first filed. (See chapter 14, laws of 1927.)

And in the event that the proceedings under section 655 should determine that Henry G. Rogers is the nominee on the democratic ticket, and in the event that he should elect to have his name printed upon the republican ballot, this would not operate to place George R. Allen in nomination on the democratic ticket, neither would the provisions of chapter 98, laws of 1927, permit the central committee to designate someone as the nominee on the democratic ticket for the reason that there is no vacancy, in my opinion, among candidates nominated, within the meaning of that statute.

Since all of the names were written in by the voters, there were in fact no candidates on the democratic ticket and hence no vacancy among candidates arises within the meaning of that statute. However, should the proceedings under section 655 determine that George R. Allen is the democratic nominee, then his name shall appear upon the democratic ballot along with the name of M. H. Parker as the democratic nominee.

Very truly yours,

L. A. FOOT,

Attorney General.