

Elections — Resignations — Vacancies — County Central Committee.

One who has been nominated by having his name written in can resign but his resignation leaves his party without a candidate at the primary election and as no vacancy exists among candidates the vacancy caused by resignation cannot be filled by the county central committee.

September 20, 1928.

R. M. Hattersley, Esq.,
County Attorney,
Conrad, Montana.

My dear Mr. Hattersley:

You have submitted to this office a question as to whether one who has been nominated by having his name written in upon the ballot at the primary nominating election and who thereafter accepted the nomination can resign at this time; and, second, if he resigns, whether his place can be filled by the county central committee of the party upon whose ticket his name was written in.

Section 639, as amended by chapter 7 of the session laws of 1927, provides:

“Every political party which has cast three per centum (3%) or more of the total vote cast for Representative in Congress at the next preceding general election, shall nominate its candidates under the provisions of this law, and in no other manner.”

A petition for nomination for any office where nomination is required to be made at the primary election recites:

“I am a candidate of the.....party for the nomination for the office of....., * * * and if I am nominated as a candidate of the.....party for such office I will accept the nomination and will not withdraw.”

This office has held that one whose name is written in at the primary election may, by accepting the nomination, become a candidate of the party upon whose ticket his name was written in, but that one cannot be compelled to run for office against his wishes or be a candi-

date against his will. (Vol. 10, Opinions of the Attorney General, page 356).

Where his name has been written in he has not subscribed to the statement required in a nominating petition as set forth above; consequently, he may resign. However, if he does resign, then there was no candidate of the party at the primary election and no authority for filling the vacancy any more than there would be if no name had been written in at the primary election.

Chapter 98, session laws of 1927, provides that the county central committee shall have power to fill vacancies occurring among the candidates of their respective parties nominated by the primary nominating election, and it follows that where there is no candidate of the party at the primary election there is no vacancy that can be filled by the county central committee.

Very truly yours,

L. A. FOOT,
Attorney General.