

Primary Elections—Cities—Candidates—Filing Fees.

Candidates for municipal offices at a primary nominating election held under the statutes relating to commission form of government for cities are not required to pay filing fees.

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City Clerk,
Helena, Montana.

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My dear Mr. Kessler:

You have requested an opinion on the question of whether candidates for municipal offices at a primary nominating election held under the statutes relating to commission form of government for cities are required to pay filing fees.

Section 5377, R.C.M. 1921, is a part of Chapter 57, of the Laws of 1911, relating to commission form of government in cities and deals specifically with the nomination of candidates for the offices of mayor and councilman.

It is therein provided that the persons possessing the qualifications mentioned in the statute, and who desire to become candidates for these offices, must file with the city clerk a statement of their candidacy in the form provided in said section which must be accompanied with a petition of at least twenty-five qualified voters requesting such candidacy. After the expiration of the time for filing the statement and petitions and after certain other things mentioned by the statute have been done by the city clerk, he must cause the primary ballots, with the names of the candidates thereon, to be printed, and the ballot "shall have no party

designation or mark whatever." The section then provides further the machinery and method of holding the primary nominating election and the ascertainment of the result thereof.

It is apparent that candidates at the primary nominating election held to fill elective offices in cities under the commission form of government are not the candidates of any political party. It also appears that the statutes relating to primary elections held in such cities do not require the payment of a fee by the candidate as a condition precedent to his right to file and have his name placed upon the primary ballot. Unless such a requirement exists by reason of some applicable statute which is not a part of Chapter 57 of the Laws of 1911, then no filing fee is required of such candidates.

Sections 631 to 670, inclusive, R.C.M. 1921, were enacted in 1912 by virtue of the initiative measure. These sections relate to primary nominating elections held for the purpose of choosing candidates "by the political parties" for senator in congress and all elective state, district and county officers, delegates to constitutional or other conventions and for the purpose of choosing and electing county central committeemen by the several parties subject to the provisions of the law.

Section 634 provides:

"The nomination of candidates for municipal offices by the political parties subject to the provisions of this law shall be governed by this law in all incorporated towns and cities of this state having a population of thirty-five hundred and upward as shown by the last preceding national or state census. * * *"

It is further provided by said section that all petitions "by the members of such political parties" for the placing of names of candidates for nomination for such municipal offices on the primary nominating ballots of the "several political parties" shall be filed with the city clerk who performs the same duties as are provided by law to be performed by the county clerks with respect to primary nominating elections held to select candidates by political parties for county offices.

Section 641 required the candidate to file a petition in the form set out in said section, which was not only required to be signed by the candidate but also by a certain percentage of electors. Upon the filing of this petition the candidate was entitled to have his name appear upon his party ballot without the payment of any filing fee.

By amendments in 1923 and 1927, Sections 640 and 641 were amended so that it no longer was necessary to have the petition signed by electors, but it is sufficient for the petition to be signed only by the candidate, but it is provided by the amendment that the candidates are required to pay certain filing fees as set forth in the amendment. If Section 640 as amended applies to primary nominating elections to select candidates for municipal offices in cities of over thirty-five hundred population under the commission form of government then the candidates would be required to pay a fee as therein provided. If said section as amended does not apply to the aforesaid primary nominating

elections then there is no provision in the law requiring these candidates to pay a filing fee.

That said Section 640 as amended, requiring the payment of a fee by the candidates, does not apply in the case of primary nominating elections held in cities under the commission form of government is apparent from the fact that the general primary law is applicable only to the nomination of candidates by **political parties** and by Section 634 the said primary law is extended to cities and towns having a population of thirty-five hundred and upward where the nomination of candidates for municipal offices is **by the political parties** subject to the provisions of the law. The statutes relating to primary nominating elections in cities under the commission form of government specifically prohibit any party designation of the candidates on the ballot, and, therefore, the nomination of candidates in said cities cannot in any sense of the word be considered as being the nomination of any political party.

As Section 640 as amended does not by itself apply to nonpartisan nominations in cities under the commission form of government but, on the other hand, applies only to nominations by political parties, and as there is nothing in the law relating to primary nominating elections in cities under the commission form of government that makes Section 640 as amended applicable to such nominating elections, it is my opinion that there is no provision at law by which the candidates at a primary nominating election held in cities under the commission form of government, for municipal offices, may be required to pay a filing fee.

Very truly yours,

L. A. FOOT,
Attorney General.