

**Primary Elections—Independent Candidates—Candidates.**

A candidate of a political party who was defeated at the primary nominating election can run as an independent candidate for the same office though he cannot become a candidate of any other party.

Charles F. Huppe, Esq.,  
County Attorney,  
Roundup, Montana.

August 1, 1930.

My dear Mr. Huppe:

You have requested an opinion whether a party who had filed as a candidate of the Republican party for county commissioner, but who was defeated at the primary nominating election held on July 15th can, under the law, file as an independent candidate for the same office.

While Section 651, R.C.M. 1921, as amended by Chapter 67 of the Laws of 1929, is far from being a perfect model of legislative intent expressed in statutory form, nevertheless, I am of the opinion that it was the intention of the legislature to declare by said legislation, among

other things, that a person whose name appeared upon a party ticket as a candidate of a political party but who failed of nomination at the primary election on that party ticket cannot have his name appear "under any party designation" upon the ballot to be used at the ensuing general election. It is, however, provided in said Chapter 67 that "nothing in this act shall preclude any elector from having his name printed upon the ballot as an Independent Candidate."

It will be observed that as to the party mentioned in your letter the only restriction of the statute is that his name shall not be printed upon the ballot for use at the general election "under any party designation." His proposal to run as an independent candidate would not, if carried out, require any party designation, as an independent candidate is not the candidate of any political party, but only of the individual electors who signed the petition required by Section 615, R.C.M. 1921, to be filed to place an independent candidate's name upon the ballot.

State ex rel. Wheeler vs. Stewart, 71 Mont. 358,  
230 Pac. 366;  
State ex rel. Woody vs. Rotwitt, 18 Mont. 502,  
46 Pac. 370.

It is therefore my opinion that the party mentioned in your inquiry is not prohibited from running as an independent candidate by the fact that he was a candidate of a political party at the primary nominating election, but failed of nomination thereat on the party ticket upon which he ran and that he may run as an independent candidate for the same office for which he was a candidate at the primary nominating election.

Very truly yours,  
L. A. FOOT,  
Attorney General.