

**Candidates — Elections — Withdrawal — Nominations —
County Central Committee—Vacancies.**

The county central committee has no power to fill a vacancy caused by the withdrawal of a candidate for the reason that a candidate cannot withdraw after receiving the nomination, and thus no vacancy exists.

Harry M. Shelver, Esq.,
Chairman, Park County Republican
Central Committee,
Livingston, Montana.

August 28, 1930.

My dear Mr. Shelver:

You have requested my opinion on the following question: Where a person files on the Republican ticket for the office of county clerk and recorder and receives the nomination, can he resign or withdraw and thus create a vacancy among candidates, to be filled by the county central committee?

This question has never been passed upon by our Supreme Court. However, the question has been presented to the Supreme Court of Nevada under statutes almost identical with ours in the case of *State ex rel. Donnelley, Chairman, vs. Hamilton*, 111 Pac. 1026, and in holding that a candidate could not resign or withdraw after receiving the nomination the court said:

“The learned district judge took a humane view of the case, and was of the opinion that, ‘where the party realized that his

condition of health was such that he was unable to make either a campaign for himself or a campaign in assistance of the party, it would seem that he not only could resign, but that it was his duty, as occurred to Col. Eddy from the letter presented to the Republican committee', and that 'the affidavit that he would not resign is a requirement of a declaration of fealty to the party on the part of those receiving at its hands a nomination'. We think these are considerations of policy or expediency for the Legislature, and not for the courts, and that the answer to the question presented depends upon the act and intention of the Legislature. If, under the language or policy of the statute providing for primary elections (Laws 1908-09, c. 198), it appears that the Legislature intended to prevent the withdrawal from the ticket of candidates after they had been nominated by the majority of the voters of the party, the court cannot modify the statute and make any exception, and allow candidates to withdraw under particular circumstances or for deserving reasons when the Legislature has intended to prohibit withdrawals and has not made any exception for special cases in which they may be allowed.

"The statute requires, by Section 5, subd. 4, that each candidate upon filing his nomination papers, make an affidavit stating, among other things, that he is a duly qualified elector, 'and that if nominated he will accept such nomination and not withdraw, and that he will qualify as such officer if nominated and elected'. The candidate had filed that affidavit with his nomination papers preliminary to having his name placed upon the primary ballot, and he received a majority of the votes of his party at the primary election. It is provided in Section 24 of the primary act (Laws 1908-09, c. 198) that: 'The person receiving the highest number (of votes) at a primary election as the candidate for the nomination of a political party for an office shall be the candidate of the party for such office, and his name as such candidate shall be placed on the official ballot voted at the ensuing election. * * * ' Section 27 provides: 'Vacancies occurring after the holding of any primary election shall be filled by the party committee of the city, county, city and county, district or state, as the case may be'. There is no provision in the act in relation to withdrawals, except the one to which we have referred, by which it is required to be stated in the affidavit of the candidate filed with the nominating papers that if he is nominated he will accept such nomination and not withdraw.

"The intention of the Legislature controls the courts in the construction of statutes. * * * * *

"Counsel for petitioner urges that the candidate may withdraw because it is nowhere directly stated in the act that the petitioner may not withdraw. It is often held that the purpose and spirit of an act will control the latter, but the wording and

requirements of this statute indicate the intention of the Legislature. In the absence of any direct statement that he may or may not withdraw, we feel limited to a construction of the provision that the candidate shall state in the affidavit 'that if nominated he will accept such nomination and will not withdraw'. The requirement of such a declaration by the candidate, regardless of whether it must be made under oath, indicates that the Legislature intended that he should not be allowed to withdraw, and that he should keep and not repudiate the obligation exacted, for surely, if it were intended that he should be allowed to withdraw, and the Legislature made any reference in the act to withdrawals, we must conclude that, instead of requiring an affidavit from the candidate that he would not withdraw, a provision would have been inserted allowing such withdrawal, or, if it were intended only to require a moral obligation or one to show good faith, the candidate would be required to make oath that he did not intend to withdraw, leaving him free to change his mind and withdraw. The statute requires the candidate to state in the affidavit 'that he affiliated with said party at the last preceding general election, and either that he did not vote thereat or voted for a majority of the candidates of said party at said next preceding general election, and intends to so vote at the ensuing election, and that if nominated he will accept such nomination, and not withdraw'. As he need state only his intention as to how he shall vote, but must swear positively that he will not withdraw, a distinction is clearly expressed, and it is evident that the Legislature intended to require only a statement of his intention as to how he will vote, but an unconditional and continuing assurance that he will not withdraw. This means even more than would a bare statement in the statute that the candidate shall not be allowed to withdraw, for it is reinforced by the requirement of an agreement under oath on his part, and this sworn obligation not to withdraw amounts to more than a mere promise that he will not have his name taken from the ticket. To hold that the requirement in the affidavit of the candidate that he will not withdraw implies that he may withdraw would be as inconsistent, and as contrary to the apparent purpose of the statute, as to hold that by providing that a witness shall take an oath to tell the truth, it was not intended by the Legislature that he should be required to tell the truth. We cannot discredit the Legislature with the belief that the obligation was imposed with the intention of having it regarded only as a moral promise, without legal effect, to be lightly ignored by the candidate as he might desire, and at his instance by the courts. We must assume that our lawmakers, selected by popular vote as representative citizens, are honest and high-minded men, and that they do not purposely waste the time of the legislative session in passing idle, useless, or non-effective enactments, and that they would not impose such an obligation upon candidates for office without an intention of

having it observed. It is evident that this provision was inserted in the law for a beneficial purpose, and so that a candidate would not be allowed to trifle with the public or the voters of his party by withdrawing after he had voluntarily become a candidate and received a majority of the votes, and the state had been to the expense of a primary or other election."

The reasoning of the court in the above case is well founded and I believe the decision would be followed by the Supreme Court of this state. It is therefore my opinion that a candidate cannot resign after receiving the nomination, and that no vacancy could be created by his attempt to do so, which could be filled by the county central committee.

In answer to your further questions, I know of no method by which a candidate could get his name on the ballot other than as an independent.

Very truly yours,

L. A. FOOT,
Attorney General.