

**Elections—Special Elections—Nominations—Candidates—  
Vacancies—County Central Committee—State Senators.**

The death of a holdover senator creates a vacancy in that office. Persons may be nominated as the candidates of political parties for said office which is to be filled at a special election, by convention or primary meetings, as authorized by Sections 612, etc. Independent candidates may run therefor by following the procedure set out in Section 615, R.C.M. 1921, etc.

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Attorney at Law,  
Hardin, Montana.

August 29, 1930.

My dear Mr. Bunston:

You have requested that I furnish you with a copy of an opinion rendered by this office relative to the manner of nominating candidates for the unexpired term of the late Senator Richardson of your county. The opinion reads as follows:

“Senator Richardson of Big Horn county recently died while he was the incumbent of the office of senator from that county. He was a holdover senator and therefore he was not a candidate at the recent primary nominating election. The governor, as required by law, has called a special election for the purpose of filling Senator Richardson’s unexpired term. The question has arisen as to how, if at all, nominations may be made of candidates for the office at said special election.

“It has been suggested that the county central committees of the respective political parties are empowered to make these

nominations. The power of such committees does not extend to making original nominations. They may only make nominations when vacancies occur among the candidates of their respective parties nominated by the primary nominating election, where the vacancy is caused by death or removal from the electoral district, or otherwise. (Chapter 34, Laws of 1929.) As Senator Richardson was not a candidate nominated at the last primary nominating election, it is apparent that his death created no vacancy among the candidates of a political party and therefore a situation is not presented which comes within the statutes authorizing the county central committees to make nominations for this office. (State ex rel. Smith vs. Duncan, 55 Mont. 376, 177 Pac. 248.)

“Prior to the enactment of our primary nominating election law in 1912, there were, and now are, in effect certain statutes relative to the nomination of candidates by convention or primary meetings and by petition signed by electors. These statutes are found in the code as Sections 612 to 630, inclusive. The direct primary law applies only to nominations of candidates for offices to be filled at an ensuing general election, and as to these it is exclusive and renders the older laws inoperative. The direct primary law does not apply to special elections. (State ex rel. Reibold vs. Duncan, 55 Mont. 380, 177 Pac. 250.) As the older law applied to all nominations whether for special or general elections and as it has been supplanted by the direct primary law only insofar as general elections are concerned, it follows that the older law is still in effect as to special elections. Therefore, nominations of candidates by political parties to fill the unexpired term of Senator Richardson may be made by conventions or primary meetings as authorized by Sections 612, 613 and 614, R.C.M. 1921, or of independent candidates by petition signed by electors as provided in Section 615, R.C.M. 1921.”

Very truly yours,

L. A. FOOT,  
Attorney General.