

**Elections—Primary Elections—Candidates—Nominations
—Vacancies—County Central Committees.**

A candidate at the nominating primary election but defeated thereat cannot accept nomination on opposing party's ticket made by the "writing in" process; neither can such candidate be nominated by the county central committee as the party candidate for the same office on the theory that a vacancy exists among the candidates.

Norman R. Barncord, Esq.,
County Attorney,
Harlowton, Montana.

September 26, 1930.

My dear Mr. Barncord:

You state that L. R. Daems filed for the nomination to the office of county attorney on the Republican ticket at the last primary nominating election but was defeated by his opponent, L. D. Glenn; that the name of L. R. Daems was written on the Democratic ticket by some of the electors for the office of county attorney and he thereby received the greatest number of votes on the Democratic ticket for the nomination for the office of county attorney; that he subsequently tendered his acceptance of the Democratic nomination but the clerk refused to accept the same, relying upon the provisions of chapter 67 of the laws of 1929 for his authority to sustain such action; that thereafter the Democratic county central committee, deeming a vacancy to exist, nominated the said L. R. Daems as its candidate of the Democratic party for the office of county attorney at the coming election.

Upon this statement of facts you inquire if it was within the power of the Democratic county central committee to make such nomination. In the first place under chapter 67, laws of 1929, Mr. Daems could not have accepted the Democratic nomination for the reason that prior to the nominating election he had filed as a candidate of the Republican party and said chapter specifically provides that if a person who has filed his petition as the candidate of one party fails of nomination by

that party he shall not have his name printed on any ballot under any party designation. The action of the clerk in refusing to receive Mr. Daems' acceptance of the Democratic nomination was in accordance with said chapter 67.

As to the right of the Democratic county central committee to now nominate Mr. Daems as the candidate of that party for the office of county attorney I beg to refer you to an opinion this day written by this office to Lloyd I. Wallace, deputy county attorney, Polson, Montana, a copy of which I enclose you herewith. It will be observed that it is held in said opinion that the county central committee of a political party does not have the power to make nominations of persons for election to offices where the persons who receive the highest number of votes for the respective offices by the "writing in" process failed to accept the nominations.

As Mr. Daems could not accept the nomination at the hands of the Democratic party by the "writing in" process a case is presented which is governed by the Wallace opinion. Neither Mr. Daems nor any other person was at any time prior to the committee's action and subsequent to the primary nominating election a candidate of the Democratic party for the office of county attorney. Consequently no vacancy existed at the time of the committee's action and the action of the committee is without legal effect and Mr. Daems is not entitled to have his name printed on the ballot to be used at the ensuing general election as the candidate of the Democratic party for the office of county attorney.

Very truly yours,

L. A. Foot,
Attorney General.