

Opinion No. 545

Elections—Primary Elections—Nominations—Conventions—Candidates—Counties.

HELD: Where a political party did not receive 3% of the vote cast in the congressional district, it may nominate a candidate for congress at a primary convention.

In a county where a political party did not receive 3% of the votes cast for congressman, its candidates for county offices may be nominated by primary convention, but where it did receive such 3% vote its candidates must be nominated by primary election.

of the Communist Party, the law requires that candidates for county offices shall be nominated by primary election, as other nominations, and cannot be nominated at a convention.

May 24, 1934.

You state that the candidate for Congress of the Communist Party received more than three per cent of the votes cast in your county for that position at the last general election. You inquire whether or not candidates for county offices on the Communist Party must be nominated by primary election or by the filing of petitions. I am advised by the Secretary of State of the State of Montana that a candidate for Member of Congress from your district on the Communist ticket at the last election did not receive three per cent of the total vote cast for such office in the entire Congressional District. The statute, a part of the primary election law, reads as follows: "Every political party which has cast three per centum (3%) or more of the total vote cast for representative in congress at the next preceding general election in the county, district or state for which nominations are proposed to be made, shall nominate its candidates for public office in such county, district or state, under the provisions of this law, and not in any other manner; and it shall not be allowed to nominate any candidate in the manner provided by section 612 of this code." (Section 639, R. C. M., 1921, as amended by section 1, Chapter 7, Laws of 1927.)

Section 612, R. C. M., 1921, provides for nomination of candidates by convention. Therefore, it would appear that the candidates for Congress of the Communist Party may be nominated at a primary meeting as provided by R. C. 612.

In the matter of county officers the situation is entirely different. In counties where the Communist Party did not receive three per cent of the votes cast for Congressman, its candidates for county officers may be nominated at a convention.

In your county, where more than three per cent of the votes cast for Member of Congress at the last general election were cast for the candidate