

Opinion No. 350.**Elections—Candidates—Nominations,
Defeated Candidate Not Nominee
In Another County.**

A candidate filed for office of county attorney on the republican ticket in Custer County and was not nominated; but his name was written in and he received the highest number of votes for County Attorney on the democratic ticket in Powder River County at the same election.

HELD: Under Section 651, R. C. M. 1935, his name may not be printed on the ballot as democratic candidate for County Attorney of Powder River County.

September 11, 1936.

Mr. R. D. McCurdy
Clerk and Recorder
Broadus, Montana

This will acknowledge receipt of your letter of September 8, and while it is not usual for this office to render official opinions to county officers other than the county attorney and the board of county commissioners,

because of the nature of your inquiry we make an exception in this instance.

According to the information you submit, at the last primary election a person who filed his petition for nomination for the office of county attorney in Custer County, on the Republican ticket, failed to receive the nomination in said county but, at the same election in Powder River County, his name was written in by thirteen electors on the Democratic ticket for the office of county attorney of said Powder River County. You ask us to advise you if you should cause his name to be printed as the nominee on the Democratic ticket for the office of county attorney in Powder River County at the general election next November. You also state that the Republican nominee for this office is the incumbent county attorney, and, under such circumstances he dislikes to give you an opinion on this particular question.

Section 651, R. C. M. 1935, provides *inter alia*: "that in the event a candidate whose name has been printed upon the party ticket for which his nomination petition shall have been first filed shall fail of nomination upon the ticket upon which his name is so printed, his name shall not be printed upon any ballot under any party designation."

We think that under the plain, unambiguous and comprehensive language used in the above quotation that the name of the party referred to should not be printed on the Democratic ticket.

As was said by our Supreme Court in the case of *Clark v. Olson*, 96 Mont. 417, 431, 31 Pac. (2d) 283: "The intention of any legislation must be inferred in the first place from the plain meaning of the words used. If this intention can be so arrived at, the courts may not go further and apply other means of interpretation. (*State v. Cudahy Packing Co.*, 33 Mont. 179, 82 Pac. 833, 144 Am. St. Rep. 804, 8 Ann. Cas. 717; *State ex rel. Rankin v. Wibaux County Bank*, 85 Mont. 532, 281 Pac. 341; *Great Northern Utilities Co. v. Public Service Commission*, 88 Mont. 180, 293 Pac. 294.) 'If the legislature did not intend that the courts should accept and act up-

on this statute as it is written, then the legislature, and not the courts, should amend the Act and make it clearly express the legislative will'. (Johnson v. Butte & Superior Copper Co., 41 Mont. 158, 108 Pac. 1057, 1061, 48 L. R. A. (n.s.) 938.) In the construction of a statute, the office of the judge is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted or to omit what has been inserted. (Section 10519, Revised Codes 1921.) 'Our duty is not to enact, but to expound, the law, not to legislate, but to construe legislation; to apply the law as we find it, to maintain its integrity as it has been written by a co-ordinate branch of the state government. (Cooke v. Holland Furnace Co., 200 Mich. 192, 166 N. W. 1013, L. R. A. 1918E, 552.)' (Chmielewska v. Butte & Superior Min. Co., 81 Mont. 36, 261 Pac. 616, 617.)"