

Town of Baker, 51 Mont. 176, 20 C. J. 207, and other authorities, reached the conclusion that in the event the person elected to an office could not or would not qualify that the person receiving the next highest number of votes is not elected. This principle is generally recognized by the courts.

We believe that the same rule applies in relation to nominations; therefore, the person receiving the second highest number of votes upon any ticket is not by reason of such fact, entitled to qualify as its nominee where the person receiving the highest number of votes qualified upon another party ticket.

Opinion No. 351.

**Elections—Candidates—Nominations,
Qualification of Second Highest
Candidate.**

HELD: The candidate receiving the second highest number of votes upon any ticket is not by reason of such fact entitled to qualify as its nominee where the person receiving the highest number of votes qualifies upon another party ticket.

September 16, 1936.

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You inquire in relation to the following question: Where candidate A was a candidate upon one ticket upon which he was nominated, and also received the largest number of votes in the primary on another ticket, and qualifies upon the ticket where he originally filed, does the party who received the second largest number of votes upon the other ticket thereby become the candidate of such other ticket?

If you will refer to opinion No. 2, Volume 15, Opinions of the Attorney General, page 18, you will note that this office, quoting from Cadle v.