

**Opinion No. 338.****Elections—Vacancies Among Candidates—Who May Be Nominated by Central Committee.**

HELD: 1. The county central committee may, if it chooses, nominate to fill a vacancy among candidates the person whose name was written in at the primary election, but who thereafter failed to qualify.

2. The failure of a person whose name was written in for the office of State Senator at the primary election to qualify by accepting the nomination created a vacancy among the candidates which can be filled by the county central committee.

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October 7, 1938.

Board of County Commissioners  
c/o Charles M. Otter  
Clerk and Recorder  
Baker, Montana

Gentlemen:

You have requested my opinion on the following question: If a person was nominated at the last primary election for State Senator on the Democratic Ticket, but he failed to accept the nomination within ten days after the election as required by Section 640, R. C. M. 1935, may he be nominated by the County Central Committee and be entitled to have his name placed on the ballot for the general election on November 8?

Section 662 (Id.) provides that the "county and city central committees shall have the power to make nominations to fill vacancies occurring among the candidates of their respective parties nominated for city or county offices by the primary nominating election where such vacancy is caused by death or removal from the electoral district, or otherwise."

It is my opinion that the failure of the person whose name was written in to qualify by accepting the nomination created a vacancy among the Democratic candidates which can be filled by the Democratic County Cen-

tral Committee. See Opinion 628 in Volume 15, O. A. G., page 431, and the authorities therein cited.

We find no statute preventing the nomination by the County Central Committee of the same person whose name was written in at the primary election and who thereafter failed to qualify. In the absence of such statutory restriction the County Central Committee has the power to nominate anyone whom it chooses.