

Opinion No. 162.

Candidate, Nomination Petition—
Nominating Petition, Candidate—
Democratic and Republican Ticket
Political Party Ticket, Nomination

Held: A candidate for nomination may not file a petition for nomination for an office on one political party ticket, and, at the same time, file a petition for nomination for the same office on another and different political party ticket.

May 24, 1946.

Mr. Robert E. Purcell
County Attorney
Garfield County
Jordan, Montana

Dear Mr. Purcell:

You have proposed the following question for my opinion:

May a candidate for nomination file a petition for nomination for an office on one party ticket, and at the same time, file a petition for nomination for the same office on another party ticket?

The facts are as follows: A candidate has applied to the county clerk to file for the office of State Representative for both the Democratic and Republican parties, signing a petition in each case and tendering the fee of \$15.00 with each petition for nomination. You ask if the clerk can legally accept both of these filings and place the name of said candidate on each ticket for the primary nominating election.

The statutes to be considered are found in Chapter 65, Revised Codes of Montana, 1935, entitled "Party Nominations By Direct Vote—The Direct Primary." The primary election law, enacted by vote of the people in 1912 (Laws of 1913, page 570) deals exclusively with nomination of candidates to public office by the political parties (Section 632). Section 640, as amended by Chapter 27, Laws of 1945, provides for the filing of petitions for nomination. Section 641 provides for the form of the petition required by Section 640, as amended, and Section 651 relates to arrangement, printing and voting of the ballots. The question is, do these sections, or any other sections of the primary law, preclude the idea of an applicant for nomination seeking the nomination of two distinct political parties for the same office at the same primary election.

It must be remembered the object of the primary law, generally speaking, was to avoid these things which under the old convention system were believed to be corrupt. The spirit of the law was to get a popular expression as to choice of candidates from the membership of the respective political parties within the state. The

purpose of the primary is to enable the rank and file of each political party to nominate the party's representatives for public office. (Roberts v. Cleveland, 149 Pac. (2d) 120). Section 631 provides for the construction of the primary law, stating that whenever the provisions of this law in operation prove to be of doubtful or uncertain meaning, or not sufficiently explicit in directions and details, the general laws of Montana, and especially the election and registration laws, and the customs, practice, usage and forms thereunder, in the same circumstances or under like conditions, shall be followed in the construction and operation of this law, "to the end that the protection of the spirit and intention of said laws shall be extended so far as possible to all primary elections, and especially to all primary nominating elections provided for by this law."

The question is left to a consideration of our primary law. Chapter 65 contemplates nominations under our primary law to be made in one of three ways, namely: filing of petition for nomination under section 640 as amended; write-in on the primary ballot, under Section 640 as amended; or, nominations under Section 612 by a political party that did not cast three per centum or more of the total vote cast for Representative in Congress, and any new political party about to be formed or organized (Section 639); and every political party which has cast three per centum or more of the total vote cast for Representative in Congress at the next preceding general election in the county for which nominations are proposed to be made, shall nominate its candidates for public office in such county, under the provisions of this law, "and not in any other manner" (Section 639).

Section 640, as amended by Chapter 27, Laws of 1945, provides in part as follows:

"Any person who shall desire to become a candidate for nomination to any office under this law shall send by registered mail, or otherwise, to the secretary of state, county clerk, or city clerk, a petition for nomination, signed by himself, accompanied by the filing fee hereinafter provided for, and such petition shall be filed and shall be conclusive evidence for the purpose of this law

that such elector is a candidate for nomination by his party . . ." (Emphasis mine.)

Section 641 prescribes the form for the petition required by Section 640, as amended, and provides, among other things, that the candidate is the candidate of "the _____ party" for the nomination for a designated office, and, if the petitioner is nominated "as a candidate of the _____ party" for such office, he will accept the nomination and will not withdraw.

Section 645 further provides the Secretary of State, county clerk and city clerk shall keep a book entitled "Register of Candidates for Nomination at the Primary Nominating Election" and shall enter thereon on different pages of the book for different political parties subject to the provisions of the law, the title of the office sought, the name and residence of the candidate for nomination, the name of "his" political party, and the date of receiving "the petition" for nomination signed by the candidate.

"Political party" is defined as:

"A number of persons united in opinion or action as distinguished from or opposite to the rest of the community or association . . . one of the parts into which a people is divided on questions of public policy."

"A body of people contending for antagonistic or rival opinions on policies in a community or society, especially one of the opposing political organizations striving for supremacy in a state." (Emphasis mine.)

See *State ex rel. Mills v. Stewart*, 64 Mont. 453, 210 Pac. 465.

The Supreme Court of Wisconsin, in *State v. Anderson*, 100 Wis, 523, 76 N. W. 482, in determining the constitutionality of an anti-fusion law, stated:

"Men are supposed to stand for principles when placed in nomination by political parties . . ."

It is true that under our open primary system a person may become a candidate for nomination of a political party without qualifications as to party affiliation. It is my opinion, however, that the whole scheme of our primary law, in all its scope, contemplates some declaration of party principles before

the signing of the petition for nomination; the signing presupposes the knowledge by the candidate of the principles of the party whose nomination he seeks; and is, in effect, a party pledge. The idea of trying to ride two political horses at the same time is so absurd as to have no foundation in law. The candidate could not as a republican candidate consistently claim a democratic nomination in the same primary and vice versa. The natural justice of the situation, as well as the clear legal right, is not with him.

The petition for nomination and Section 640, as amended, provide the single weapon by which a party may defend itself against intrusion of persons not members of it. By the express terms of Section 640 as amended the petition shall be **conclusive evidence** for the purpose of this law that such elector is a candidate for nomination by "his" party.

The section clearly and explicitly contemplates the filing of petition for nomination for one—"his"—party. Section 639 further provides in this respect "Every political party and its regularly nominated candidates, members and officers, shall have the sole and exclusive right to the use of the party name and the whole thereof."

The petition for nomination, itself, which must be signed by the elector seeking the nomination, further precludes the idea of signing petitions for nominations on two different political party tickets. The petition includes the phrase "and if I am nominated as the candidate of the _____ party for such office. I will accept the nomination and will not withdraw . . ." Section 620 provides for declination of nominations. Section 647 provides the provisions of Section 620 and 621 shall apply to nominations or "petitions for nominations" made under the provisions of this law, in case of death of the candidate or his removal from the state or his county or electoral district before the date of the ensuing election, **but in no other case.** The elector files his petition for nomination fully expecting that he might obtain the nomination upon that party ticket. The electors in the county have every right to expect that the elector they nominate will not withdraw from his nomination for trivial or personal reasons, other than those enumerated in Section 647, above. Declination of nomi-

nation on a party ticket to accept the nomination on another party ticket is not a reason enumerated in Section 647. The acts of an elector, in signing two petitions for nomination on different party tickets for the same office, could not be more inconsistent, are not within reason and can find no justification under our primary law.

This is a novel petition in this state, not having been passed upon by this office nor by our courts. Therefore, we are faced with lack of authority on the immediate question. Decisions in other jurisdictions, decided under the provisions of the "closed" primary law, and particular statutes requiring party affiliation and membership to complete the petition for nomination (State ex rel. Thatcher v. Brodigan, 142 Pac. 520) have no application here. Nor are questions of selection of candidates who are members of another party or nomination of candidates by the write-in method necessary to this decision. The immediate question concerns the filing of a petition for nomination. I think the object of the primary law and the intent of the legislature, as expressed in the provisions of the statutes, compel only one conclusion—an elector may file a petition for nomination only on his party ticket.

If this question were answered otherwise, the politically ambitious may flout the colors of a political party to which they recognize no actual allegiance, and the integrity of the party system of government would be destroyed.

The theory of separate political parties has been a fundamental concept of American government since the birth of this nation. That theory has been deserted for fusionist practices on certain occasions; and invariably when the theory of separate political parties has been discarded, political anarchy and chaos have resulted and government stalemated. Despite the popular distaste for politics as it is at times, politics as a governmental science was conceived and considered by our Founding Fathers as a vehicle for the presentation of governmental philosophy on the basis of ideals and principles, as distinguished from passion and prejudice. The people who choose their elected officials—but who also in the final analysis are the governed—have the inalienable right to know where candidates stand

and to which political party they owe their allegiance. Under our system of government, therefore, the office-seeker owes it to his constituents to declare his philosophy, his ideals, and his principles. He cannot do that and keep faith also with more than one political theory or party, at the same election.

It is therefore my opinion a candidate for nomination may not file a petition for nomination for an office on one political party ticket, and, at the same time, file a petition for nomination for the same office on another and different political party ticket.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General