

Opinion No. 203.

Political Parties—County Central
Committee—State Senator—Ballots—
Nominations—Elections—Vacancies
in Nominations.

Held: 1. Section 662, Revised Codes of Montana, 1935, as amended by Chapter 84, Laws of 1939, and as interpreted in substantially its present form by our Supreme Court in the case of State ex rel. Smith v. Duncan, 55 Mont. 376, 380, 177 Pac. 248, gives authority to the county

central committee of the political party concerned to fill a vacancy in nomination for the office of State Senator caused by the death of the nominee.

2. Pastors or stickers may be printed and distributed in the manner set out by Section 680, Revised Codes of Montana, 1935, for substitution in the proper place on each ballot to indicate the nominee who succeeds the deceased.

August 30, 1946.

Mr. Raymond Shelden
County Attorney
Carter County
Ekalaka, Montana

Dear Mr. Shelden:

You have stated this question:

The Republican nominee for State Senator died early this month after receiving his certificate of nomination. May the county central committee nominate a candidate for State Senator to fill the vacancy in the nomination? May stickers or pasters be printed and delivered by the county clerk to be substituted for the name of such deceased nominee?

Section 647, Revised Codes of Montana, 1935, provides the method for filling vacancies in nominations caused by death. Section 662, Revised Codes of Montana, 1935, as amended by Chapter 84, Laws of 1939, provides the county and city central committee shall have the power to make nominations to fill vacancies occurring among the candidates of their respective parties nominated for city or county officers by the primary nominating election where such vacancy is caused by death. This latter section, in substantially the same form, was considered by our Supreme Court in the case of *State ex rel. Smith v. Duncan* (1918), 65 Mont. 376, 380, 177 Pac. 248. The filling of a vacancy in nomination was not the question directly before the court in the case; but the situation was discussed, and Mr. Justice Halloway said:

"If at the time of his death Mr. Miracle was a candidate for state senator, then his death created a vacancy which the committee could fill."

Section 680, Revised Codes of Montana, 1935, provides the manner for printing and distribution of pasters to be used on the ballot when a vacancy has occurred before election day and after the printing of ballots and a person has been nominated according to the provisions of the code to fill such vacancy. The section is clear, specific and unambiguous.

It is therefore my opinion:

1. Section 662, Revised Codes of Montana, 1935, as amended by Chapter 84, Laws of 1939, and as interpreted in substantially its present form by our Supreme Court in the case of *State ex rel. Smith v. Duncan*, supra, gives authority to the county central committee of the political party concerned to fill a vacancy in nomination for the office of State Senator caused by the death of the nominee.

2. Pastors or stickers may be printed and distributed in the manner set out by Section 680, Revised Codes of Montana, 1935, for substitution in the proper place on each ballot to indicate the nominee who succeeds the deceased.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General