

Opinion No. 125

**Elections—Vacancies on Party
Tickets—Nominations by Central
Committees to Fill Vacancies.**

**Held: 1. A vacancy on a party ticket
caused by death of a nominee
to a county office, may be filled**

by the county central committee.

2. The county central committee of a party which did not nominate a candidate for a county office at the primary election may not fill the vacancy on the party ticket for that office in the ensuing general election.

October 10, 1952.

Mr. Robert T. Pantzer
County Attorney
Park County
Livingston, Montana

Dear Mr. Pantzer:

You have requested my opinion upon the following questions:

1. When the nominee of a political party for a county office dies before the general election, and he was, before his death, unopposed for the office by any other nominee, may the Party Central Committee of his party select a nominee in his place?

2. May the Party Central Committee of any other party, which did not nominate a candidate in the primary election, also select a candidate?

The answer to your first question is contained in the provisions of Title 23, Chapter 9, Sections 23-901 to 23-936, Revised Codes of Montana, 1947, popularly known as the direct primary law. Section 23-909 of this chapter provides in part:

"Every political party which has cast three per centum (3%) or more of the total vote cast for Representative in Congress at the next preceding general election in the county, district or state for which nominations are proposed to be made, shall nominate its candidates for public office in such county, district, or state, under the provisions of this law, and not in any other manner; and it shall not be allowed to nominate any candidate in the manner provided by section 23-801. . . ."

The Montana Supreme Court, in the case of LaBorde vs. McGrath, 116 Mont.

283, at page 288, interpreted this statute as follows:

"Whenever the provisions of the primary nominating election law (Secs. 23-901 through 23-936) apply, the convention or primary meeting methods of making nominations provided for in section 23-801, are expressly ruled out and prohibited."

The wording of Section 23-909, supra, and the holding in the LaBorde case make it clear that any political party which cast 3%, or more, of the total vote cast for Representative in Congress at the next preceding general election must nominate its candidates in the manner provided by Sections 23-901 through 23-936, supra, exclusively, and may not nominate any candidate in any other way. The method of nomination for filling vacancies among the party's candidates is set out in Sections 23-915 and 23-929 (4), Revised Codes of Montana, 1947. Section 23-915, supra, is a general section permitting the filling of certain specified types of vacancies by the methods set forth in Sections 23-810 and 23-811, Revised Codes of Montana, 1947. Section 23-929, supra, is a section devoted to the elections and functions of county and city central committees. It specifically covers the situation you have inquired about, so this opinion will not deal with the possible courses of action under Section 23-915, supra. Section 23-929 (4), supra, states:

"Said county and city central committee shall have the power to make nomination 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, resignation or removal from the electoral district, but not otherwise."

Under this statute, the county central committee is specifically authorized to fill a vacancy created by the death of the nominee. It is, therefore, my opinion that the county central committee may fill a vacancy on the party ticket, caused by the death of a nominee for a county office whether or not such nominee was opposed by a nominee of any other party in the forthcoming general election.

In answer to your second question, I call your attention again to the requirements of Section 23-909 and 23-920, supra, and to the quoted portion of LaBorde vs. McGrath, supra, expressly prohibiting nomination by parties which cast 3% or more of the total vote cast for Representative in Congress at the next preceding general election in any other manner than that specified in Sections 23-901 through 23-936, supra. If such a party has failed to nominate a candidate in the regular manner at the primary election, so that there is a vacancy upon the party ticket, there is no provision of the direct primary law which permits the party to fill that vacancy by another manner of nomination. Vacancies may be filled only in the manner prescribed by Section 23-929, (4), supra, quoted above, or by Section 23-915, supra, which states in part:

"The provisions of sections 23-810 and 23-811 shall apply to nominations, or petitions for nominations, made under the provisions of this law, in case of the 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 . . ." (emphasis supplied)

It is evident that neither of these statutes allow a party to fill a vacancy occurring because no one filed for nomination at the primary election on that party's ticket.

Therefore, it is my opinion that the central committee of a party which did not nominate a candidate for a county office in the primary election may not fill the vacancy on the party ticket for that office in the ensuing general election.

Very truly yours,
ARNOLD H. OLSEN
Attorney General