

Opinion No. 67**Elections—Candidates, Resignation of—Clerk and Recorder—
County Central Committee**

- Held:** 1. A candidate who has been nominated at the primary election can withdraw or resign his candidacy for the office to which he was nominated.
2. The Clerk and Recorder has the right to remove the name of the candidate who has resigned or withdrawn subsequent to his nomination and, if necessary, insert the name of the person nominated by the county central committee to fill this vacancy.

July 29, 1958

Mr. Ed McCauley
Chairman
Board of County Commissioners
Jefferson County
Boulder, Montana

Dear Mr. McCauley:

You have requested my opinion on the following questions:

(1) Is it possible for a candidate who has been nominated at the primary election to withdraw his name from the general election ballot?

(2) Does the Clerk and Recorder have the right to remove the name of the nominated candidate from the ballot when the candidate's resignation is received?

Your first question has been the subject of earlier opinions of the Attorney General. In 13 Opinions of the Attorney General, page 278, then Attorney General Foot, held that a candidate nominated at the

primary election could not thereafter resign his candidacy. The basis for this opinion was the construction placed upon Section 641, RCM, 1921 (now Sec. 23-911, RCM, 1947) which provides in part, that a candidate in the primary election shall take an oath which states that if nominated he will:

“. . . accept the nomination and will not withdraw . . .”

In 1934, Attorney General Nagle affirmed this opinion on the basis that:

“The fact that on August 28, 1930, the then Attorney General rendered an opinion to the effect that a candidate nominated under like circumstances as the candidate in question could not withdraw so as to create a vacancy, (13 Opinions of Attorney General, 278) and that the legislature which has twice met in regular session since then has apparently acquiesced in his construction of the statute, . . . should not be overlooked in this connection.”

See, 15 Opinions of Attorney General, p. 417.

Subsequent to this opinion, Section 662, RCM, 1935, (now Sec. 23-929, RCM, 1947) which related to the powers and duties of county and city central committees, was amended to provide:

“(4) Said 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 offices by the primary nominating election where such vacancy is caused by death, **resignation** or removal from the electoral district, **but not otherwise.**” (Language underscored indicates amended portion.)

See, Sec. 1, Ch. 84, L. 1939.

In my opinion the addition of the word “resignation” to Sec. 662, supra, clearly indicates the legislature intended that a candidate could withdraw or resign from his candidacy and create a vacancy on the general election ballot. This expression of intent overrules the earlier opinions of the Attorneys General, supra.

In order to carry out the provisions of the election laws of this state, the Clerk and Recorder upon receipt of the resignation or notice of withdrawal should contact, by letter, the chairman of the county central committee of the party involved, informing the committee of the resignation and requesting that the committee make a nomination to fill the vacancy resulting from this resignation.

Your second question in my opinion, is answered by the provisions of Section 23-1104, RCM, 1947, which provides:

“Pasters to be printed and distributed where vacancy has been filled. When any vacancy occurs before election day and

after the printing of the ballots, and any person is nominated according to the provisions of this code to fill such vacancy, the officer whose duty it is to have the ballots printed and distributed must thereupon have printed a requisite number of pasters containing the name of the new nominee, and must mail them by registered letter to the judges of election in the various precincts interested in such election, and the judges of election whose duty it is made by the provisions of this chapter to distribute the ballots, must affix such pasters over the name for which substitution is made in the proper place on each ballot before it is given out to the elector."

In the event that no candidate is nominated by the central committee to fill the vacancy, the above quoted statute would, by direct implication, authorize the Clerk and Recorder to remove the name of the resigning candidate from the general election ballot.

It is therefore my opinion that:

1. A candidate who has been nominated at the primary election can withdraw or resign his candidacy for the office to which he was nominated.

2. The Clerk and Recorder has the right to remove the name of the candidate who has resigned or withdrawn subsequent to his nomination from the general election ballot, and, if necessary insert the name of the person nominated by the county central committee to fill this vacancy.

Very truly yours,
FORREST H. ANDERSON
Attorney General