

DEAR SIR: I am in receipt of your favor of the 7th instant, asking an opinion on certain phases of the Election Law of 1913.

You call my attention to the fact that on page 493, under section 12, this law provides for the publication and printing of the registry list, and that sections 13 and 17 also refer to the same matter. You ask my opinion as to whether the printing of the registry list shall be given by the Registry Agent or by the Board of County Commissioners. Upon consideration of subdivision 2, section 1508, and sections 1509, 1530, 1539, and 2867, Revised Laws, I am of the opinion that the printing of the registry list rests, after being certified by the Registry Agent, with the Board of County Commissioners.

Respectfully submitted,

GEO. B. THATCHER, Attorney-General.

135. Elections--Independent Nomination--Nomination by Petition of Electors--Who May Sign.

1. No person who has voted in a convention for or against a candidate for any office shall join in nominating by petition, or otherwise, any other nominee for the same office.

2. An elector, who has registered as a member of one of the several political parties for a primary election, is not thereby disqualified from signing nominating petitions of independent candidates for office.

3. An elector, who signs an independent candidate's petition, is not thereby disqualified from voting in party primaries.

Carson City, August 14, 1914.

HON. E. O. PATTERSON, County Clerk of Ormsby County, Carson City, Nevada.

DEAR SIR: I am in receipt of your letter of August 11, submitting for my opinion the following question:

Can an elector, who signs an independent candidate's petition, vote at the ensuing primary election?

Your question presents as a corollary a further question:

Can an elector, who has registered as a member of one of the political parties of this State, sign the nominating petition of an independent candidate?

Section 2 of chapter 3 of "An Act relating to elections and removals from office,"

approved March 31, 1913, provides:

All candidates for elective public offices shall be nominated as follows: 1. By direct vote at primary elections held in accordance with the provisions of this Act; or, 2. By nominating petitions signed and filed as provided by existing laws. \* \* \*

It is manifest from this section at almost the outset of the Primary Law that independent candidates may be nominated by petition. This is followed by a further provision of the Primary Act itself, subdivision c of section 7, which provides as follows:

© Nothing herein shall be construed as prohibiting the independent nomination of candidates to be voted for at any general election, by electors or bodies of electors, as now provided by law, but a candidate defeated at a primary election held under the provisions of this Act shall be ineligible for nomination to the same office at the same election.

Section 2 of chapter 5 of “An Act relating to elections and removals from office,” approved March 31, 1913, under the title “Australian Ballot Law,” defines a convention and the purposes for which it may be held. Section 3 is the legislative authority for the nomination of independent candidates by petition, and is as follows:

A candidate for public office may be nominated otherwise than by a primary election in the manner following: A certificate of nomination shall be signed by electors residing within the district or political division for which candidates are to be presented equal in number to at least ten percent of the entire vote cast at the last preceding election in the State, district, or political division for which the nomination is to be made; provided, that such certificates shall not be valid unless signed by five voters. Said signatures need not all be appended to one paper, but each signer shall add to his signature his place of residence. One of the signers of each such certificate shall swear that the statements therein made are true, to the best of his knowledge and belief, and a certificate of such oath shall be annexed. Such certificate of nomination shall have the same effect as a nomination shall have the same effect as a nomination made by a primary election. The certificate of nomination herein provided for shall state the name of the party or principle which the person nominated by petition of electors represents, but in so doing the name of no political party existing at the last preceding general election shall be used.

Section 4 of the said chapter provides for the place and manner of filing of certificates of nomination or petitions of independent candidates. Section 5 of said chapter 5 defines the requisites of the petition, and prescribes the only disqualification that can be found with reference to who may or may not sign independent candidates’ petitions, section 5 being as follows:

No certificate of nomination shall contain the name of more than one candidate for each office to be filled. No person shall join in nominating under the provisions of

section 4 of this Act more than one nominee for each office to be filled, and no person who has voted in a convention either in person or by proxy for or against any candidate for any office, shall join in nominating, in any manner, any other nominee for that office, and no person shall accept a nomination to more than one office.

The only disqualifications that are expressly made are those enumerated in section 5 that no person who has voted in a convention, either in person or by proxy, for or against a candidate for any office shall join in nominating by petition or otherwise any other nominee for the same office, and this, I believe, is the only disqualification which exists. The Election Law and the Primary Law are purely statutory, and unless the Legislature makes further disqualifications than those enumerated in the statutes, no other disqualification should be read into the Act. The Legislature has expressed the only disqualification, and applying the maxim "Expressio unius est exclusio alterius," it would seem that the Legislature has expressed the only disqualification it intended to make.

I am therefore, of the opinion that an elector who has registered as a member of one of the several political parties of this State for a primary election is not thereby disqualified from signing nominating petitions of independent candidates for office, and that such signatures, if otherwise qualified, are proper, and should be counted in making up the necessary percentage required to be upon independent petitions.

I am further of the opinion that an elector who signs an independent candidate's petition is not thereby disqualified from voting in party primaries, if he is properly registered for such primary. It is not a requisite that a member of a party shall vote or intend to vote for every nominee of his party at the ensuing election, and that it is well shown by the nomination papers of candidates, which only require of candidates that they shall intend to vote for a majority of the candidates of said party. See subdivision a, section 7 of chapter 3, of an Act entitled "An Act relating to elections and removals from office," approved March 31, 1913. No stricter rule or requirement certainly could be applied to electors within a party than to the candidates of the party.

I am further confirmed in this opinion by section 18 of the Primary Law, which gives the grounds for challenge, and while one of the grounds for challenge is that the intended voter does not belong to the particular party designated upon the register, yet there is no right of challenge by reason of the fact that an elector has signed an independent candidate's nominating petition. A man may be a member of a party and entitled to participate in the selection of candidates, even though he does not intend to support all of the candidates of the party.

I further call your attention to the opinion of my predecessor in office, the late Honorable Cleveland H. Baker, contained in the Report of the Attorney-General for the years 1911-1912 at pages 145, 146, and 147, in which Mr. Baker held, and with which I am of full accord, that there is no provision of law prohibiting electors who have voted in a primary election from signing a petition of an independent candidate for nomination to an office to which a nominee had been selected at the primary.

Respectfully submitted,

GEO. B. THATCHER, Attorney-General.

136. Elections--Candidates--Corrupt Practices Act, Statements Under--Time for Filing.

August 27, 1914, is the day designated by Corrupt Practices Act (Stats. 1913, 478) for filing ante-election statement, and September 16, 1914, for filing post-election statements.

Carson City, August 25, 1914.

HON. L. F. ADAMSON, Carson City, Nevada.

DEAR SIR: I am in receipt of your favor of the 24th instant, inquiring as to the date on which the preliminary statement required of every candidate for nomination or election to public office under section 8 of the Corrupt Practices Act (Stats. 1913, p. 478).

Said section provides as follows:

Every candidate for nomination or election to public office \* \* \* shall five days before and fifteen days after the election at which he was a candidate file with the Secretary of State (or County Clerk or City Clerk) an itemized sworn statement setting forth all moneys or other valuable thing contributed. \* \* \*

The question to be determined, therefore, is, what is meant by the expression "five days before"? In the case of Ward v. Walters, 63 Wis. 39, it was decided that where an Act was required to be done a certain number of days or weeks (before a certain other day upon which another act is to be done), the whole number of days or weeks must intervene before the day fixed for doing the second act. In Cyc. 38, p. 317, it is said:

Either the day on which the period begins or the day on which it expires must be included and the other excluded.

In the same volume, on page 14, it is said:

It is a general rule that fractions of days are not recognized in law.

The primary election occurring on the 1st of September, five full days before that date would fall on the 27th of August under the law, not regarding fractions of days.

I am, therefore, of the opinion that August 27, 1914, is the day for filing the pre-primary expenses statement of candidates required by section 8 of the Corrupt Practices Act.

The second statement required of candidates fifteen days after election is to be filed on