

**229. Elections—Candidates—Withdrawal—Vacancies.**

One who has become the nominee for political office through the primary election or through having no opposition in the primary cannot have his name omitted from the general election ballot.

The provisions of section 25 of the registration law (Stats. 1917, p. 286) in regard to filling a vacancy applies only to vacancy occurring by the death or loss of reason of the nominee.

CARSON CITY, September 16, 1918.

HON. J.H. WHITE, *District Attorney, Hawthorne, Nevada.*

DEAR SIR: I am in receipt of your favor of the 13th instant, asking the following questions in regard to the primary law:

1. What is the duty of the County Clerk, when a candidate whose name has been regularly filed as a nominee of a political party for a certain office, asks that his name be withdrawn from the list of nominees, stating that he does so by direction of the Federal Administrator (Director-General) of the Railroads, the said nominee being a federal railroad employee?

2. If the name of a candidate for such office (assuming that there is a vacancy) is offered for filing by the county central committee, is the County Clerk required to accept such filing and certify such nominee as being the candidate of his party for such office?

1. As the candidate in question has regularly filed as a nominee of a political party for a certain office his nomination paper must have been similar to that set forth on page 278, Statutes of 1917, being part of section 5 of the primary election law. This declaration states "that if nominated as a candidate of said ..... party at said ensuing election, I will accept such nomination and not withdraw; \* \* \* and that I will qualify for said office if elected thereto." This language is exactly similar to that passed upon by the Supreme Court in the case of *State v. Hamilton*, [33 Nev. 418](#), in which it was held:

One nominated at a primary election as a candidate of a political party for a public office cannot have his name omitted from the general election ballot, even though he has since the primary become incapacitated from making an active campaign.

The only kind of incapacity stated by the candidate in your letter as a reason for withdrawing is that he does so by direction of the Federal Administrator of Railroads because he is a federal railroad employee.

This reason can have no bearing upon the question whatsoever, as the United States Government has no right to interfere with state laws in a matter of this kind. The person in question is the nominee of his party for the office, and, in accordance with the decision in the case above mentioned, he cannot withdraw therefrom. It is therefore the duty of your County Clerk to refuse his request for withdrawal.

2. In my opinion there can be no vacancy for such office except that occurring by death or loss of reason of the nominee. Whether the office in question is a partisan or nonpartisan office you do not state, but in either event if a vacancy occurs in such manner it can be filled by following the provisions of section 25 (Stats. 1917, p. 286) of the primary law.

Yours very truly,