

imposed upon citizens to be performed without compensation, yet the statute providing for the performance of such duties has not been declared unconstitutional. For instance, jury duty in a criminal cases in Justice Courts is not paid for; the Sheriff may want a posse when necessary-- this service is not paid for; and surely there is no stronger reason to pay members of a party for supervising their party's primary than the instances noted.

By order of the Attorney-General:

Respectfully submitted,

ROBERT RICHARDS, Deputy Attorney-General.

131. Elections--Enrolled Partisan May Seek Nomination as an Independent--An Official Is Not Required to Resign Office to Become Candidate for Another Office.

CARSON CITY, July 22, 1922.

HON. J. W. BURROWS, City Attorney, Sparks, Nevada.

Dear Sir: Your letter of July 11 to the Secretary of State has been transmitted to this department for reply. Accordingly, you are advised that an enrolled Republican may secure nomination for an office as an Independent; that the securing of a nomination for an office in Sparks township would not necessitate resigning an office already held under the city of Sparks. Your questions 2 and 3 are answered by section 31, page 28, of the Election Laws, which we are enclosing you under separate cover.

By order of the Attorney-General:

Respectfully submitted,

ROBERT RICHARDS, Deputy Attorney-General.

132. Elections--Laws Relating Thereto Construed in Certain Respects.

CARSON CITY, July 25, 1922.

To the County Clerks of Nevada:

Dear Sirs: This department is in receipt of several urgent requests calling for our official opinion concerning the subject-matters hereof. Accordingly, to the end that there may be uniformity throughout the State of the application of the law in regard thereto, you are severally advised as follows:

1. "Registration offices shall be open for registration of voters for any election, Sundays and legal holidays excepted, from and after the first day of June, in any general election year, except as otherwise provided in this Act, up to the twentieth day next preceding such election and between the hours of 9 a.m. and 5 p.m."

This is the language of the statute (Stats. 1919, p. 264); it is clear, it requires no interpretation, and must be pursued.

The doubt in the premises is more apparent than real, and arises from the proviso following the language quoted, namely: "*provided*, that the office of the County Clerk, as ex officio registrar, shall be open for registration of voters for any election at all times when said office is open for the transaction of his business as County Clerk; *provided further*, that during the ten days previous to the close of registration the registration office shall be open evenings until 9 p.m."

These provisos, if taken according to the letter and not according to the spirit of that portion of the statute quoted, defining the periods when the registration offices shall be open and closed, respectively as aforesaid, nullify the statute in that regard. It is an ancient rule in the interpretation of statutes that provisos in a statute, which, taken literally, render the body of the statute inoperative, have no binding force. Moreover, as laid down in 36 Cyc. 1132, "where one part of a statute is susceptible of two constructions and the language of another part is clear and definite, and is consistent with one of such constructions and opposed to the other, that construction must be adopted which will render all clauses harmonious." This rule is fortified by abundant decision law.

Therefore, the registration office shall be open from and after the first day of June in any general election year, up to the twentieth day next preceding such election, as aforesaid.

2. "No elector shall be entitled to vote a party ballot at primary elections unless he has theretofore designated to the registry agent his politics or political party to which he belongs and has caused the same to be entered upon the register by such registry agent; *provided, however*, that no elector shall be denied to vote a nonpartisan ballot for judicial and school offices at such primaries." Stats. 1917, p. 276.

This language is equally clear.

Therefore, no elector shall be entitled to vote upon the ballot of the party with which he is not affiliated as disclosed by the registration records; except, if he is not affiliated of record with any party, he, with all other electors registered, shall have the right to vote a non-partisan ballot for judicial and school officers, as laid down in the statute.

A political party stands for certain principles, and each of its members stand for these same principles. It would be destructive of party organization and, as a consequence, of the party itself if unaffiliated electors would be permitted to vote at

primaries the ballots of any political party, or if affiliated electors would be permitted to vote at primaries ballots of any political party with which they are not affiliated.

3. No filing fee shall be exacted of candidates for the office of Public Administrator.

The statute provides: "Any candidate filing a nomination paper \* \* \* shall pay to the filing officer a fee for such filing as follows: If a candidate for nomination for United State Senator, two hundred fifty dollars, etc. \* \* \* No filing fee shall be required of a candidate for an office the holder of which receives no compensation." Stats. 1921, p. 321.

The statute referred to and quoted specifically enumerates the offices and the respective filing fees therefor, but the office of Public Administrator is not included. Moreover, the holder of the office of Public Administrator receives no compensation whatever as Public Administrator. The office merely qualifies him to become administrator of certain estates, and for his services as administrator of such estates he is compensated under general law on a parity with other administrators--not as Public Administrator, but as administrator of such estates. He, therefore, is not compensated for holding the office of Public Administrator, and the filing fee in question should not be exacted of him.

Therefore, you should govern yourself in the discharge of your official duty, in accordance with this opinion.

By order of the Attorney-General:

Respectfully submitted,

ROBERT RICHARDS, Deputy Attorney-General.

133. Criminal Law--Strikes--Railroad Forcing Trespasses to Work--Amenable to Law Quoted.

CARSON CITY, July 31, 1922.

HON. FRANK H. INGRAM, Commissioner of Labor.

Dear Sir: We have your letter of the 31st instant, calling for our official opinion on the facts contained in the affidavits submitted therewith. Succinctly stated those facts are: Two men, Joseph Bondi and John O'Dea, arrived in the Sparks yards on July 15, 1922, apparently secreting themselves en route upon one of the freight trains of the Southern Pacific Railroad Company. Upon alighting from said train a special officer of the company approached them and stated that unless they went to work in the shops for said company at Sparks for fifteen days he would throw them in the "can" for sixty days, and that, on account of said threat, and for no other reason, they did go to work in said shops.