

We also hold that if the affidavit of claimant appears to be untrue the assessor may reject it and leave the claimant to any remedy the law gives him—as, for instance, a petition for mandamus.

We have advised assessors heretofore that only a married claimant's half interest in community property is considered in computing value (in addition, of course, to any separate property).

Very truly yours,
ALAN BIBLE, Attorney General
By: Homer Mooney, Deputy Attorney General

**OPINION NO. 46-371. Veterans Administration—Certified Copies of Records
Furnished to Administration Without Charge.**

Carson City, September 27, 1946

MR. A.T. SPATZ, *Contact Officer, Veterans Administration, Reno, Nevada.*

DEAR MR. SPATZ: This will acknowledge receipt of your letter of September 24, 1946, received in this office September 25, 1946, respecting the furnishing to the Veterans Administration certified copies of public records required by the bureau to be used in determining the eligibility of veterans to participate in benefits made available by the United States through the Veterans' Bureau.

We are of the opinion that officials charged with the custody of public records shall furnish to the Veterans Administration, upon request, certified copies of such records without charge.

The Uniform Guardianship Acts, approved March 5, 1929, the same being sections 9548-9568, N.C.L. 1929, provides that it shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those States which enact it, and also it shall be construed liberally to secure the beneficial intents and purposes and shall apply only to beneficiaries of the bureau.

Under definitions given in the Act, the term bureau means the United States Veterans' Bureau or its successor. The term benefits shall mean all moneys payable by the United States through the bureau.

Section 14 of the Act, being section 9561, N.C.L. 1929, reads as follows:

Whenever a copy of any public record is required by the bureau to be used in determining the eligibility of any person to participate in benefits made available by such bureau, the official charged with the custody of such public record shall without charge provide the applicant for such benefits or any person acting on his behalf or the representative of such bureau with a certified copy of such record.

Under the definition contained in the Act and its policy of liberal construction to secure the beneficial intents and purposes to beneficiaries of the bureau, the section above quoted cannot be interpreted to apply to records in guardianship matters exclusively.

This Act read in connection with section 6875, N.C.L. 1929, which provides that no fee or charge shall be made by any state, county, or township officer of this State for administering oaths or certifying or acknowledging any paper for United States pensioners in any matter pertaining to their pensions is indicative of the intent of the Legislature that the fees established by statute to be charged by officers on charge of public records does not apply to certified copies of such records required by the Veterans Administration or beneficiaries under laws administered by that bureau.

Very truly yours,
ALAN BIBLE, Attorney General
By: George P. Annand, Deputy Attorney General

**OPINION NO. 46-372. Elections—Justice of Supreme Court—Two Nominating
Petitions to Fill Vacancy on Election Ballot Can Be Received to at Least 15
Days Before November Election.**

Carson City, September 27, 1946

HONORABLE MALCOLM McEACHIN, *Secretary of State, State of Nevada*,
City, Nevada.

Carson

DEAR MR. McEACHIN: Your letter dated September 23, reached this office September 25, 1946.

You ask if you may properly assume that no further nonpartisan nominating petitions can be filed to fill the vacancy on the Supreme Court caused by the death of Judge Ducker, in view of the fact that a petition has been filed on behalf of Judge Eather.

You indicate that on an affirmative answer you will proceed to certify the nomination (with others) to the respective county clerks pursuant to section 33 of the General Election Law (sec. 2470, N.C.L. 1929, as amended, Stats. 1943, p. 103).

The answer is in the negative. Section 25 of the Primary Law provides:

"In the event of vacancies in nonpartisan nominations, the vacancy shall be filled by the person who received the next highest vote for such nomination in the primary for such office. If there shall be no such person then the vacancy may be filled by a petition signed by qualified electors equal in number to five percent of the total vote cast for Representative in Congress at the last preceding general election in the county, district, or State, as the case may be. Such petition shall be filed on or before fifteen days before the November election." (Sec. 2429, N.C.L. 1929.)

A similar situation was presented in the case of *State ex rel. Penrose v. Greathouse*, [48 Nev. 419](#). District Judge Hart died October 12, 1924, while serving a term to expire by time on January 1, 1927. A general election was to be held by law November 4, 1924. The Secretary of State declined to file a nominating petition presented to him under section 25 of the Primary law on October 17, 1924.

The Supreme Court ruled that the petition be filed by an order made October 22, 1924. Formal opinion was filed February 19, 1925.

It appears from the opinion that Judge Kenny who occupied the office after Judge Hart's death under a commission from the Governor, also filed a nominating petition so that if Judge Guild's name was placed on the ballot for the November 4 election, Judge Kenny's name would likewise be so certified and printed. This was stipulated and the court made no objection. The record does not disclose when Judge Kenny's petition was filed but like Judge Guild's it was probably filed more than fifteen days before November 4. However, after the court decided the matter only thirteen days remained to prepare the ballots. The court held that a vacancy in office caused by death is a vacancy in nomination to be filled by petition.

The court did not expressly decide the question here presented. By implication it approved two petitions. The court said:

"Assuming for example that *more* than two persons should be nominated by petition to fill a vacancy for an unexpired term, which of such nominees should have a place upon the general election ballot?"

"We express no opinion upon the subject but suggest that the question is one worthy of the attention of the legislature * * *."

The court therefore contemplated that two petitions were covered by the law reserving decision on *more than two*.

As to your "immediate" duty under section 33 of the General Election Law we hold this means "as soon as may be." The former provision was thirty-five days before the general election. It now is "immediately following the primary election." Even here the officer must wait for a canvass of the votes cast at the primary.

In the Greathouse case notwithstanding the thirty-five day law, the Secretary of State certified the nominations after October 22.

Until the Legislature changes the law, this office cannot change it. Two petitions can be received and must be filed if presented at least fifteen days before the November election.

The law certainly should be changed to cover the problem presented by your question. Both the Supreme Court and this office have recommended changes. However, until the law is amended we must abide by the Supreme Court's decision.

Very truly yours,

ALAN BIBLE, Attorney General

By: Homer Mooney, Deputy Attorney General

OPINION NO. 46-373. Elections—Death of Candidate After Primary Election—Party Committee Can Designate Candidate in Lieu of Dead Person for November Election.

Carson City, September 30, 1946

HONORABLE GROVER L. KRICK, *District Attorney, Douglas County, Minden, Nevada.*

DEAR MR. KRICK: This will acknowledge receipt of your letter of September 12, received in this office on September 13, 1946.

The facts of your letter disclose that at the time of the September primary there were two Republican candidates for State Senate. There were no Democratic candidates nor Independent candidates. Because of this fact the two Republican candidates were not required to run in the primary election. After the primary election one of the candidates for State Senate died.

You now ask—is there a vacancy on the Republican ticket which can be filled by the Republican party.

It is the opinion of this office that in such a situation as is presented by your facts that the law and public policy of the State permit the selection of a candidate to fill the vacancy caused by the death of one of the Republican candidates. The time has long since expired whereby an Independent could file his petition. Likewise no Democrat having filed prior to the September primary, such party now in my opinion has no standing in the matter.

We realize, of course, that the problem presented involves very substantial rights, particularly to the one remaining candidate now seeking the office of State Senator. Because of the importance of the problem, we think that it might be well if those vitally interested would seek a final decision from the Supreme Court of the State.

Our decision is based upon section 2425, Nevada Compiled Laws 1929, 1941 Supplement, read in connection with section 2429 Nevada Compiled Laws 1929. We likewise have the benefit of the Court expressions from the Supreme Court of our state in the cases of *Riter v. Douglas*, 32 Nevada, page 433; *Ex rel. McGill v. Oldfield*, 48 Nevada, page 264; and *Penrose v. Greathouse*, 48 Nevada, page 419.

Section 2425, Supplement, provides in part as follows: “*provided*, that if only one party shall have candidates for an office or offices for which there is no independent candidate, then the candidates of such party who received the highest number of votes at such primary (not to exceed in number twice the number to be elected to such office or offices at the general election) shall be declare the nominees of said office or offices; *provided further*, that where only two candidates have filed for a partisan nomination for any office on only one party ticket, and no candidates have filed for a partisan nomination on any other party ticket, for the same office, to which office only one person can be elected, the names of such candidates shall be omitted from all the primary election ballots, and such candidates’ names shall be placed on the general election ballots.”

Am Jur. vol. 18, p. 179, defining the meaning of the term election, recites the following rule:

“An election may be broadly defined as the expression of a choice by voters of a body politic, or as otherwise expressed, it is the means by which a choice is made by the electors.”

It appears from section 2425, *supra*, that the Legislature intended that a choice of persons in the candidates for office should be offered the electors whether or not there was a choice in a political party.