

Unless there is some impediment placed in the way of such taxation by the United States Government, there is no alternative, under the mandatory provisions of the Nevada statutes, than to assess the interests of the lessees concerned in the "Wherry Projects."

Any impediment to State taxation, which may be thought to exist by reason of exclusive Federal jurisdiction which may have been acquired, is, in the opinion of this office, removed by Section 6 of the Wherry legislation (C. 493, Sec. 6, 61 Stats. 775) which provides, in part, as follows:

The lessee's interest, made or created pursuant to the provisions of this Act, shall be made subject to state or local taxation.

We are of the opinion that the lessee's interest is subject to Nevada ad valorem taxation.

Respectfully submitted,  
W. T. MATHEWS, *Attorney General*.  
By: WILLIAM N. DUNSEATH, *Deputy Attorney General*.

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**OPINION NO. 1954-335. Elections—Vacancy in Nomination After Primary Election When Only Nominee for Partisan Office was an Independent Candidate.**

CARSON CITY, May 27, 1954.

HONORABLE L. E. BLAISDELL, *District Attorney, Mineral County, Hawthorne, Nevada*.

DEAR MR. BLAISDELL: This will acknowledge receipt of your letter in this office May 24, 1954, requesting an opinion upon the following statement and questions.

**STATEMENT**

The County Auditor and Recorder of Mineral County died May 20, 1954. He was the incumbent, and had filed for reelection as an independent candidate without opposition.

**QUERY**

1. May the County Republican or Democratic, or both parties, nominate a candidate for this office?
2. If candidates may file as Independents, is there any limit to the number of Independent candidates whose names could appear on the ballot in November?
3. If Independent candidates may file, what would be the number of electors whose signatures would be required on the certificate of nomination, i.e., would it be 5 percent of the total vote cast for Representative in Congress at the last general election?

**OPINION**

Question No. 1 is answered in the negative.

Question No. 2—Independent candidates may file. No limit.

Question No. 3—The number of electors required to sign the petition is five percent of the entire vote cast at the last preceding general election in Mineral County.

Section 25 of the Primary Election Law, as amended by Chapter 145, Statutes of 1947, relates to vacancies after primary and how filled.

The first paragraph reads:

Vacancies occurring after the holding of any primary election shall be filled by the party committee of the county, district or state, as the case may be. Such action shall be taken not less than thirty days prior to the November election.

The remainder of the section deals with vacancies in nonpartisan nominations for nonpartisan offices, the number of electors required on a petition, the time in which to file, and payment of required fee.

The facts in the situation presented are that the office is partisan and no party candidate filed at the primary. The only person who filed for the office was the incumbent, and he filed as an Independent. He died after he was entitled to be certified as a candidate and only nominee for the office. The time in which a person may have his name placed on the primary ballot as a candidate for either political party has expired. The time for filing a certificate of nomination as an Independent candidate has also expired.

There is no direct provision in the election statute to meet the contingency presented in the questions submitted.

The question as to the right of a political party to fill a vacancy occurring after the holding of a primary, under statutes similar to that of Nevada, has been decided in a number of jurisdictions.

In *Anderson v. Cook*, 130 P(2) 278, the court held that the authority of a party committee to act in filling a vacancy occurring between primary and general election is contingent upon the primary nomination followed by a vacancy in that nomination. Where a primary has been held in which there were no candidates for nomination for office, the court said that the condition of Section 40 has not been fulfilled and the committee is without power to act. No vacancy on the ticket has occurred between any primary election and general election.

Section 40 mentioned, provided: "Vacancies on the ticket occurring between any primary election and general election shall be filled by the party committee of the county, district or state as the case may be."

*District Party Committee of Republican Party v. Ryan*, 106 P(2) 261, held: Where a candidate for Judge filed for Democratic nomination and Republican Party did not nominate a candidate against him and candidate died after holding primary, and thereafter the Republican and Democratic Committees named candidates to fill vacancy on respective tickets, Secretary of State properly refused to certify name of Republican party committee nominee, since statute provided for filling of vacancies occurring after holding a primary by party committee applies only to vacancies in nominations made at the primary.

Same principle in *Watson v. Witkin*, 22 A(2) 17.

In *State v. Wilson*, 40 Nev. 131, the court referred to the filling of vacancies occurring after any party convention by the party committee. The question, however, was on the lack of authority of the executive board to issue the certificate rather than the county committee.

Attorney General's Opinion No. 373, dated September 30, 1946, held where there was a vacancy on the Republican ticket after the primary election, the vacancy could be filled by the Republican party, but as no Democrat had filed prior to the primary, such party had no standing in the matter.

We are therefore of the opinion that neither the Republican nor Democratic Committee may file a certificate of nomination for a candidate or candidates under the circumstances presented in the question submitted.

#### FILLING VACANCY WHERE ONLY CANDIDATE IS INDEPENDENT

Attorney General's Opinion No. 138, dated June 8, 1934, was relative to the placing of names of Independent candidates on the primary election ballot. The opinion held that under the primary law the intent of the Legislature was that party candidates were to be nominated at the primary election and that also certain nonpartisan candidates were to be nominated at such primary. The intent of the Legislature was declared to be clear as to party candidates and nonpartisan candidates, but the primary law does not provide for the nomination of Independent candidates by an election; but provides for the nomination of Independent candidates by means

of a petition signed by electors. That when such a petition is filed with the proper officer, then such Independent candidate has the right to have his name placed on the ballot at the November election.

The case of *Riter v. Douglas*, 32 Nev. 401, decided the constitutionality of the primary law. On page 429, the court held that the primary law is not mandatory in compelling candidates who may desire to get on the official ballot to submit themselves to the primary election. They have the privilege of running independently if they desire.

The intention of the Constitution and the Election Law is that all officers whose election is provided for shall be chosen by the electors.

A general principle expressed in 20 C.J., Elections, page 126, Section 143, is that where a statute prescribes an exclusive mode of making nominations, but contains no provision for filling vacancies occurring after nominations have been made, such vacancies cannot be filled except in the manner prescribed for making original nominations.

In the present situation there is no nomination for the office of County Auditor and Recorder, due to the death of the only candidate for such office, who was nominated by petition as an Independent candidate.

It therefore follows that such vacancy should be filled in the manner prescribed for making the original nomination.

Independent candidates are not nominated at the primary election, and there is no limit as to the number of nominations by petition that may be made.

*State Ex Rel. King v. Hanson*, 294 N.W. 453.

The court held that the statute does not expressly prescribe a method for selection and elimination among the candidates, where more than one petition is presented to fill a ballot vacancy.

The Legislature might, as the court said, make such a provision for selection and elimination in such cases, but if the court were to hold that the first petition presented filled the ballot vacancy, we should be improvising for the Legislature. It would leave the race to fill the ballot vacancy to the swift alone, which is hardly a commendable exercise of democratic process. But, more than this, it would leave the situation stalemated if two or more persons should undertake to present petitions to the County Clerk at the same time.

We are therefore of the opinion that the vacancy on the ballot of County Auditor and Recorder in Mineral County should be filled by petition as provided in Section 31 of the Nevada Primary Law. The number of petitions cannot be limited. The number of electors whose signatures would be required on the certificate of nomination is at least 5 percent of the entire vote cast in Mineral County at the last general election.

Such petitions must be filed on or before 30 days prior to the November election in 1954.

Respectfully submitted,

W. T. MATHEWS, *Attorney General*.

By: GEORGE P. ANNAND, *Deputy Attorney General*.

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**OPINION NO. 1954-336. Blind Persons—Aid to by State Welfare Department. Treatment to Prevent Blindness or Restore Vision to Qualified Persons is Authorized in Act to Aid the Blind. Changes Needed in Allotment of Funds to Facilitate Such Work Program Controlled by Budget Act.**

CARSON CITY, June 18, 1954.

MRS. BARBARA C. COUGHLAN, *State Director, Nevada State Welfare Department, P.O. Box 1331, Reno, Nevada.*