

Jan 20 1939

Mr. D.M. Penny,  
Member House of Representatives,  
Fourteenth Legislature  
Phoenix, Arizona.

# LAW LIBRARY ARIZONA ATTORNEY GENERAL

Dear Sir:

We have your request for our opinion as to the validity of sub-section (f), Section 1, House Bill No. 10, introduced by Messrs. Reichard and Klein. The sub-section in question is as follows:

"(f) NO PERSON WHO WAS AN UNSUCCESSFUL CANDIDATE FOR NOMINATION AT THE LAST PRECEDING PRIMARY ELECTION AND WHOSE NAME WAS PRINTED ON THE OFFICIAL PRIMARY BALLOT SHALL BE ELIGIBLE TO BE NOMINATED OR TO BECOME A CANDIDATE FOR THE SAME OFFICE AT THE SUCCEEDING GENERAL ELECTION."

The only restriction on the Legislature as to the enactment of laws pertaining to holding public office is found in Section 2, Article 7 of the State Constitution which provides in substance:

"That the Legislature may not deny or abridge the right of a citizen to hold office on account of sex"

Section 10 of the same article of the Constitution directs the Legislature to enact primary election laws and provide for the nomination of candidates for all elective state, county and city offices. The section last mentioned authorizes the Legislature to enact such laws as may be necessary to effectively provide a sufficient and satisfactory primary law and to enact all restrictions and qualifications necessary to carry into effect said Section 10 of the Constitution and to prescribe the qualifications of candidates for public office.

Our Supreme Court has not decided the question you present but we find authorities from other jurisdictions supporting our position.

20 C.J. page 126; Section 140 states the general rule as follows:

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"Some statutes provide that one who has failed in his attempt to obtain a party nomination at a primary election shall not be eligible for nomination by another party, and shall not be an independent candidate at the ensuing general election. Such statutes have been held to be constitutional \* \* \*."

In the case of State v. Moore, 37 Minn. 303; 92 N.W. 4; 94 Amer. State Report 702; 59 L.R.A. 447; the court sustained a Minn. statute in the following language;

"\* \* \*no names of candidates. . .upon a primary election ballot....shall be placed upon the official election ballot unless such candidates have been chosen in accordance with this act, except in case of vacancy occasioned by death, resignation, or removal, \* \* \*."

The Minn Constitution in respect to holding public office is similar to our Constitution and in that jurisdiction the court sustained the validity of the above quoted statute and said;

"\* \* \*It is claimed for petitioner that this statute, in forbidding one who voluntarily becomes a candidate for a party nomination at the primary election and fails to secure it from having his name on the official ballot, interferes with and materially impairs his eligibility for the office for which he failed to be nominated; and it is further claimed that every person who is eligible thereto has the right to be a candidate for an office, whether he has already sought it as a party representative or not. This guaranty of the organic law relates to essential qualifications, and dispenses with any other test to hold office (as birth, education, and the like) than the right to vote, and this, we apprehend, is the extent of the guaranty. It is not attempted therein to provide regulations for voting, nor the details of the candidacy of the aspirant. The right to vote and the right to hold office are to be declared to be co-ordinate. The methods

by which these rights shall be protected and enforced are, of necessity, left to legislative action; but we shall readily assume that it is an inherent right of citizenship that only such a system of regulation be provided for as will be just and reasonable, and operate in its application to all voters and to candidates equally \* \* \* ,

"Of necessity, there must be upon such a ballot a regular order in which the names shall be placed and other features incident to the procedure that tend to create incidental advantages to one candidate over another; but it would seem proper that any candidate who seeks the assistance of the primary election law to aid him in securing party support should be bound by the obligations of good faith and the dictates of fair play to which he has voluntarily subjected himself. It is said by this law to a candidate, "If you prefer the advantages of a party nomination which is quite desirable, you may seek it; but if the state prepares and prints your ballot and regulates nominations so as to secure the utmost freedom of choice among the members of your party, it does so upon the submission by you to the condition that, if you are unsuccessful, it will not thereafter print your name upon the ballot to defeat your opponent;" and it should not be said, because this is refused, that it is an unreasonable condition, but rather an imposition of even-handed justice that would have been bestowed upon his previous contestant, had the result been otherwise. The conditions he accepted and the consequences he would have imposed upon his adversary should impel him upon every sanction of justice and common honesty to submit to results he should have been prepared for, and it cannot be said either that in this effort at regulation of political methods the unsuccessful aspirant for a party nomination is deprived of the right to run for office, or the majority of voters deprived of his services in office, if they desire to secure them; \* \* \*".

Another case sustaining our position is Henry v. Jordan, 175 Pac. 402 (Calif.)

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In view of the above mentioned constitutional provisions and the authorities quoted and cited, it is our opinion that said sub-division (f), House Bill No. 10, is a valid regulation which the Legislature may legally enact under our Constitution.

Yours very truly,

JOE CONWAY  
Attorney General

EARL ANDERSON ✓  
Special Assistant  
Attorney General