

March 23, 1932

Mr. O. S. French  
Mr. M. C. Hankins  
c/o Arizona Highway Democratic Club  
Phoenix, Arizona

Dear Sirs:

I am in receipt of your recent letter in which you ask my opinion upon the following question:

Was the election of the chairman and secretary of the Democratic State Central Committee as officers of this committee legal, due to the fact that they had never been elected as precinct committeemen in the September primaries?

The law with reference to party organizations and government is found in Section 1295, R. C. A. 1928. For the purposes of this opinion, I will recite those portions applicable to this question.

1. \* \* \* \* At the primaries the members of a party residing in each precinct shall choose one of their number as 'county precinct committeemen,' and in addition thereto, one precinct committeeman for each seventy-five votes or major fraction thereof, when more than seventy-five votes were cast in any precinct, for a nominee of such party for governor in the last preceding general election.

"The whole number of county precinct committeemen of each political party shall constitute the county committee of such party. \* \* \*.

2. "The state committee of each party shall consist, in addition to the chairman of such county committees, of

Messrs. French & Hankins  
March 23, 1932

one member of said county committee for each two hundred, or major fraction thereof, votes cast for its nominee for governor, at the last preceding general election, elected by the county committees from their own elected membership, at the first meeting of the county committee.

- 3. "The state committee shall meet on the last Monday in the month of the primary election for state and county offices, at twelve o'clock noon, at the state capitol and organize by electing from its own membership a chairman, secretary and treasurer. \* \* \*"

From the reading of this section, it will clearly be seen,

- 1. That the county committee is composed of those precinct committeemen elected by popular vote at the primary election.
- 2. That the State committee is composed of those elected by the county committee from their own elected membership.

- 3. From this elected membership, the State committee selects its officers.

It would seem apparent that the purpose of this section is to retain the control of party government in the hands of those who have submitted themselves to the vote of the people. It means that those who become the officers and officials of party government shall be elected, and shall be responsible to the people, and not appointed.

There is no provision in the law for the filling of any vacancy by appointment. There is, however, a provision for proxies at the county committee meeting and at the State committee meeting, which reads as follows:

"No proxy shall be given by a member of the state committee for use at a meeting of the state com-

K. Berry Peterson

mittee, except to a qualified elector of his county, and certified before a notary public, or two witnesses, and no proxy shall be given by a member of the county committee except to a qualified elector of the same county and attested by a notary public, or two witnesses."

The holder of a proxy certainly could not be called a member of the county committee or the State committee, for the holder is not an elected precinct committeeman, as provided for, nor is he a member of the State committee, for the qualification is that the members of the county committee be elected at the primary, and of the State committee, that they be elected from this membership to the State committee.

It is, therefore, my opinion that in order to be legally qualified for the position as chairman, secretary or treasurer of the State committee, a person should be a precinct committeeman elected at the primaries.

Very truly yours,

(Signed)

K. Berry Peterson

Attorney General

KBP:S

STRUCKMEYER & JENNINGS

207 Luhrs Building

Phoenix, Arizona

March 24, 1932.

Mr. Charles E. Addams  
Phoenix, Arizona

My dear Mr. Addams:

Referring to the question of the validity of your election as Chairman of the Democratic State Committee and to your right to continue to hold that office for the remainder of the term until the next election this fall. It seems to me that this is rather a moot question, coming at this late date and after you have performed the duties of that office for almost two years.

After your election as Chairman and during the campaign, when you gave your whole time toward furthering the success of the party and of its candidates, no one questioned your right to work in behalf of the party and in behalf of the ticket. It should not be forgotten that your election as State Chairman by the state committee was unanimous. It should also not be forgotten that you were slow in yielding to the requests of several of the candidates, notably of the head of the ticket, and of party leaders that you become Chairman and give your time and efforts toward bringing about the success of the party. Perhaps these matters are of little moment in solving the purely legal question involved. However, they are of more than passing interest when the motive of the question now raised as to the validity of your office is considered.

The Opinion of K. Berry Peterson. I have a copy of the opinion of K. Berry Peterson concluding that the "State Chairman of the state committee must be a precinct committeeman elected at the primaries". The opinion is signed: "K. Berry Peterson, Attorney General". Of course the opinion has no added weight because it purports to be the opinion of the Attorney General. The Attorney General "shall: devote his entire time to the discharge of the duties of his office and not engage directly or indirectly in the private practice of law; give his opinion in writing to the legislature, or either house thereof, or to any state officer, and to any county attorney, when required upon any question of law relating to their offices". The opinion of Mr. Peterson is rendered to "Mr. O. S. French and Mr. M. C. Hankins, care of the Arizona Highway Democratic Club". I know of no law which makes mem-

bers or officers of the "Arizona Highway Democratic Club" state officers to whom the Attorney General of the State of Arizona is required to give opinions in writing. Therefore, the opinion of Mr. Peterson reflects only, of course, his own views.

Eligibility to the County Committee. The county committee consists of the elected county precinct committeemen. An elected precinct committeeman, may, however, give a proxy "to a qualified elector of the same county". Therefore, the work of the county committee has to be carried on by the elected precinct committeemen or by those to whom an elected precinct committeeman has given his proxy. One to whom a valid proxy has been given is as much a member of the county committee as though originally elected thereto.

Eligibility to the State Committee. The county committee as thus composed, whether of originally elected precinct committeemen or their proxies, elect at their first meeting the counties' quota of members to the state committee.

On September 26, 1930, the certificate of election of state committeemen by the Maricopa County Democratic Precinct Committee certified that you were elected a committeeman from Maricopa County to the state committee. The state committee there after met and, as previously stated, unanimously elected you Chairman of the state committee. Your election to the state committee could be questioned only by the state committee. It is a familiar and fundamental rule that where no other method is prescribed by law a governing body is the sole judge of the eligibility of its members. Therefore, your membership upon the state committee not having been questioned at that time it is now too late to go behind the certificate of the Maricopa County committee and question your right to sit as an elected member of the state committee and hence be elected its Chairman. Whether or not you were eligible to election by the county committee to membership upon the state committee is immaterial: you were so ELECTED by the Maricopa County Democratic Precinct Committeemen and the state committee chose you Chairman, acting upon the certificate of election issued by the Maricopa County Committee. To say that you were not elected is going behind, and is a collateral attack upon, the certificate of election issued by the Maricopa County Committee.

Conclusion. The question of your eligibility as State Chairman because it is claimed you were not an elected precinct committeeman is now a moot question, wholly academic, and of no practical value.

These were the reasons which prompted me in September of 1930 to advise you that if it were the overwhelming desire of the party that you should be its State Chairman and bear

No. 3 Mr. C. E. Addams

the burden of the campaign, and if no question was then raised as to your right to be Chairman, that the validity of your election could not be afterwards questioned.

Undoubtedly, Mr. Peterson did not have before him the certificate of your election by the Maricopa County Committee to the state committee from which it plainly appears that you were, and are, an ELECTED member of the state committee. As is well known, this has been the accepted rule several times acted upon by both major political parties in Arizona for the last twenty years.

Sincerely yours,

(Signed)

F. C. Struckmeyer

FCS:JF

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