

MAINE STATE LEGISLATURE

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August 12, 1914

To J. E. Alexander, Secretary of State
Re: His Duty in regard to Nomination Papers

I have examined the petition filed in your office on August 7th, last, by Fortunat G. Michaud of Van Buren, County of Aroostook and State of Maine, protecting against the filing by you of the nomination papers of Levite V. Thibodeau of said Van Buren for representative to the legislature. . .

The papers of Mr. Thibodeau now on file contain twenty-seven names and according to the provisions of law touching nominations of this sort, twenty-five signatures would be necessary for the Class District in question. Mr. Michaud in his statement alleges grounds upon which he seeks to establish that three of the names contained in the Thibodeau petition, because of facts not discoverable in the petition itself, are invalid and that the number of names properly contained in the petition is thereby reduced to twenty-four rendering the petition insufficient for the purpose of nomination.

The question might well be raised whether or not it is a part of the duties of your department in receiving and filing these petitions to take into consideration any question of fact not contained within the particular petition. To hold that it is necessary for you to examine into the question whether or not the names appearing on any one petition have before appeared on another petition for nomination to the same office, would place an almost endless burden upon your department and require the employment of a very large force of assistants during the time when nomination papers are being received. This fact would tend to a construction that such was not a part of your duty and, if not, you would be held only to an examination of each petition and finding it in proper form, you would necessarily place the candidate's name on the ballot without more. If such were the case you would be bound to act even though facts were brought to your attention by oral evidence or affidavit showing defects of fact in the petition. You are not in any way constituted a court with power to determine such matters.

For the purpose of this particular case, however, and in order to give the greatest weight to Mr. Michaud's protest, it might be well to assume that such is your duty. Upon this assumption, you would be bound to find from the official records in your office that two names in the petition of Levite V. Thibodeau. . . had previously appeared upon (his) petition for nomination under the Primary law as Republican candidate for representative to the legislature in this same Class District. That fact being before you in your official records, you would be confronted with the question of law as to whether a voter in this state could serve to nominate two candidates of different parties for the same office. The Primary Law, Section 5, sets forth specifically that

"each voter may subscribe his name to one nomination for a candidate for each office to be filled, and no more."

Section 4 of Chapter 6 of the Revised Statutes of 1903, under which this nomination is filed, contains a like provision,

"Each voter may subscribe to one nomination for each office to be filled and no more."

The protest of Mr. Michaud must be filed on the assumption that these restrictive clauses are to be read together and that, being so read, they will prevent any voter signing a nomination paper for a candidate under the Primary Election Law from later signing a nomination paper for a candidate for the same office under Chapter 6. The basis for any construction of this sort must, of course, be that the legislative intent as shown in both laws is that each voter shall be allowed to assist in the nomination of only one candidate for any office, regardless of party. Carrying the reasoning from this intent a little farther and reading Section 106 of Chapter 6 into the above,

"No person shall vote or offer to vote in any caucus where candidates or delegates are to be chosen, if he has already voted at the caucus of any other political party in the last six months,"

we would have a situation where no voter who exercised his right of suffrage in the Primary Election just past could lend his signature to the nomination of an independent candidate under Chapter 6. It would then be necessary for you, in the discharge of the duties of your office, to have the voting lists in the Primary Election just held and check the same in connection with all independent nominations. Such a construction, it seems to me, would be absurd,

It is without doubt desirable that this question should be determined so that your duties in connection with the filing of nomination papers might be made clear, but, as it seems to me, it is entirely unnecessary so far as your course under the present facts is concerned. Taking the construction most favorable to Mr. Michaud and assuming that as a question of law a voter cannot sign two such petitions, one under the Primary Law and one under the Election Law, two signatures in the Thibodeau petition are affected and, these two being stricken out, the necessary number of twenty-five names will remain so that the nomination will be valid.

Mr. Michaud in his statement further contents that the signature of Cyr A. Cyr should be declared invalid because he previously signed the petition of Mr. Michaud for an independent nomination for the same office. Here again, assuming that it is your duty to carefully investigate the signatures appearing upon nomination papers, the facts available in your office will serve only to show that said Cyr A. Cyr on July 22nd, signed the nomination papers for both Levite V. Thibodeau and Fortunat G. Michaud for the same office. Should this invalidate the second signature, you have no record from which you can determine to which paper his name was first affixed. It might be possible to procure from Mr. Cyr a statement under oath as to which paper was first signed but that would involve upon your part the determination of a question of fact which, it seems to me, could be determined only

by the Court, after legal proceedings had been instituted and both parties given opportunity to be heard.

I should, therefore, advise that you retain the name of Mr. Thibodeau on your records as the nominee for the Class District in question under the designation of "Progressive" and that you notify Mr. Michaud to this effect. A copy of this letter is enclosed for that purpose.

Roscoe T. Holt
Assistant Attorney General