

MAINE STATE LEGISLATURE

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September 24, 1924

To Hon. Frank W. Ball, Secretary of State
Re: Vacancy among Nominees for Presidential Electors

You inquire with reference to the effect on the official ballot of the death of Luther C. Bateman, one of the six candidates nominated on nomination papers for electors on the LaFollette-Wheeler national ticket.

Three solutions of the problem are suggested: (1) to leave Mr. Bateman's name on the ballot; (2) to leave a vacancy where his name occurs; (3) to fill the vacancy with the name of Percy Young of Auburn.

My opinion is that the third of these suggestions should be adopted provided that a certificate in due form is filed with the Secretary of State's office setting forth the facts as I understand them to exist. Such a certificate has been drawn up and Mr. Kaufman, the representative of the LaFollette-Wheeler ticket in northern New England is to file it immediately.

My basic reason for this conclusion is that this is the only practicable manner of assuring the State of its full representation in the electoral college of electors favorable to the LaFollette-Wheeler ticket in the event that the LaFollette-Wheeler ticket is successful. To accomplish this result must be a paramount object of the statutes.

I discard the possibility of leaving Mr. Bateman's name on the ticket, because you know he is dead before the ballots are printed. I do not see how the Secretary of State can properly print the name of a man as a candidate whom he knows to be dead.

With Mr. Bateman's name omitted and a vacancy on the LaFollette-Wheeler ticket unfilled on the ballot, the almost inevitable result would be that the sixth elector would be one of the electors on some other ticket, because a filling in of the sixth elector by the individual voters would be practically impossible. The provisions of R. S., Chapter 7, Section 61, would not come into effect because it would not be a case of filling a vacancy in the number of electors elected. The intent of the voters to have the six votes of Maine cast for the LaFollette-Wheeler ticket would be defeated, and perhaps a Presidency of the United States decided adversely to the wish of the voters of the country.

This disposes of the first two of the three possibilities above mentioned.

Now, I work out the statutory authority on your part to permit Mr. Young's name to be inserted, from R. S., Chapter 6, Section 35. This section does not expressly cover the situation where a candidate nominated on election papers dies. If he was nominated as a person on his own initiative, neither the intent nor the wording of the

section would contemplate filling the vacancy in any way except by new nomination papers within the time allowed for filing original nomination papers and such new candidate would not be filling a vacancy, but would be nominated on his independent, additional papers, irrespective of the dead candidate.

It seems to me, however, that this section contemplates that, where, as in the present case, a definite continuity of purpose and plan with reference to the nomination of an officer like the officer in the present case can be shown, then the organization which selected the original elector should be able to fill his place. To be sure, the LaFollette-Wheeler organization is not a political party under our law, but the facts which are to be set forth in the certificate show that there was a clear, general, combined purpose on the part of a definite organization to nominate a set of electors, and that filling in the name of Mr. Young in place of the dead candidate's clearly carries out the purpose which was in the minds of those who signed the original nomination papers, although it is impracticable to get the signatures of the original signers, even if it should be held that such signatures to new nomination papers after the time limit would be of any legal effect.

Section 35 by its terms expressly applies only to legally organized political parties and regular conventions or caucuses, but the facts to be set forth in the certificate above referred to will show a very close approximation to the express wording of Section 35, in that they will show the action of a regularly elected committee representing certain persons who held a convention ratifying their own action in filing the original nomination papers, and filling the vacancy caused by the death of Mr. Bateman.

One further and very practical consideration. If Mr. Young's name is on the ballot and duly voted for by the electors, I can see no harm done. If my opinion, as above, is erroneous and his name is wrongly included in the ballot, any person interested in having it struck off can bring court proceedings to that end, and if a court decides that it should be struck off, this can be done by overprinting or stickers. It is certainly much less of a practical risk to take, in this perhaps doubtful case, to include Mr. Young's name under the circumstances, than it would be to exclude it. The practical likelihood of any objection being taken or proceedings brought to have his name excluded if it is inserted is negligible. The practical likelihood of such proceedings being brought if the name is omitted certainly exists. Bringing such proceedings would throw your whole office system with reference to printing the ballots out of gear. The omitting of the name, even if such proceedings were not brought, might well cause considerable ill-feeling and adverse criticism on the part of the supporters of the LaFollette-Wheeler ticket, who might feel that they had been discriminated against on some technicality.

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CFR/MCS