

WANTS

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WANTED—Small boy to learn trade. Geo. Haffner, Masonic Temple, Alakoa St. 2113-1w

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TO LET—Mosquito proof rooms, on suite or single; telephone, etc. Beretania Ave. cor. Keaunoku. 2110-4f

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SPECIAL NOTICES.

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WANTED

WANTED—Information of Isaac L. G. Sager, dead or alive, as I have news of special importance and to his advantage. Answer without fail. For positive proof of death will pay reward. Capt. Bert A. Stout, 533 Kearney St., room 8, San Francisco, Cal. 2107-2w

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TO LET—Modern house on Liliha St.; out-house and stable for two horses; rent cheap. Apply W. H. Pain, Tramways office. 2112-4f

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TO LET—New house on Beretania and Artesian Sts.; dining and two bedrooms, kitchen and bath. Apply 1130 Fort St. 2101-1w

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FOUND.

FOUND—Bunch of keys, on Alakoa St., Sunday night. Owner can have same by proving property and paying for notice at this office. 2109-3f

FOUND—A remedy for dandruff. You can get rid of this troublesome disease with Pacheco's Dandruff Killer. At Union Barber Shop.

FOUND—Watch in Palama. Owner can have same by calling at Bulletin office and proving property. 2105-1w

Bulletin, 75c per month.

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DR. SLOGGETT—Eye, Ear, Nose and Throat; office at Eye and Ear Infirmary, Alakoa St. Hours 9 a. m. to 4 p. m.

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ANTONE PILARES & CO.—Plumbers and Tinsmiths. All kinds of sanitary work. Sewer connections a specialty. Charges to suit the times. Corner Miller and Punchbowl

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V. H. POULSEN—Painting and paperhanging; Territory Stables, King St. 2070-4f

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JUDD & CO., LTD.—Building lots and residences for sale; 307 Stangenwald bldg.; Tel. 223 Main.

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Weekly edition of the Bulletin \$1 a year.

Secretary Cooper Right In

PLACING DREIER'S NAME

On the Ballots For Election

"In our opinion the Secretary has acted according to law so far as appears in this case and the plaintiff is not entitled to have the name of Mr. Dreier omitted from the official ballot. Judgment accordingly."

The foregoing is the conclusion of the unanimous opinion of the Supreme Court upon the submission without action of William W. Harris vs. Henry E. Cooper, Secretary of the Territory of Hawaii, Robertson & Wilder for W. W. Harris; H. E. Cooper in person; Kinney, Ballou & McClanahan for the nominators of August Dreier.

By the syllabus of opinion the law of the case is thus laid down: "Under the provisions of the election law that candidates shall be nominated by writing signed by not less than twenty-five qualified electors of the district and deposited together with twenty-five dollars with the Secretary of the Territory not less than a prescribed time before the election, and that the ballots shall contain the names of all candidates so nominated and no other name, the Secretary cannot lawfully inquire into and pass upon the qualifications of a candidate or decline to place his name upon the ballots if he is duly nominated, even though he, the Secretary, may believe him to be disqualified, nor can the courts compel him to do so, although the Secretary may inquire into and pass upon the question of due nomination and omit from the ballots the name of a candidate if the law prescribing the requirements of a due nomination has not been complied with and may be compelled by the courts to perform his duty in that respect."

Chief Justice Frear is the writer of the opinion. Justices Gallarath and Perry signing it with him. The body of the opinion is as follows: Introductory. This is a submission on agreed facts under Civil Laws, Section 1255, as amended by the Laws of 1898, Act 18. The practical question for our determination is whether under the election law the Secretary of the Territory, who has charge of the printing of ballots, should omit therefrom the name of a candidate for representative who though duly nominated is not eligible. More broadly stated, the question is whether the Secretary can go behind the question of due nomination and inquire into and pass upon the question of the qualifications of the candidate.

Agreed Facts. The facts agreed on are in substance as follows: A special election was called for April 9, 1902, to fill a vacancy caused by the death of a member of the House of Representatives. The plaintiff was duly nominated and is qualified to be a representative. One August Dreier was also duly nominated but is not qualified to be elected. On April 1, 1902, the plaintiff filed a protest with the Secretary against placing Mr. Dreier's name upon the ballot. On the next day the Secretary overruled the protest and notified the plaintiff of his, the Secretary's determination to place Mr. Dreier's name upon the ballots. The Secretary is now causing the ballots to be prepared and printed with Mr. Dreier's as well as the plaintiff's name upon them. The Secretary's sole reason for overruling the plaintiff's protest and determining to place Mr. Dreier's name on the ballots is his belief that he is without authority to inquire into and pass upon the qualifications of a duly nominated candidate.

How Disqualified. The ground stated for Mr. Dreier's disqualification is his failure to meet the requirement of Section 40 of the Organic Act, "that in order to be eligible to be a member of the House of Representatives a person shall, at the time of election," besides possessing other enumerated qualifications, "be qualified to vote for representatives in the district from which he is elected." The reason why he is not qualified to vote for representatives in that district is not stated, though we understand it to be that he is not a registered voter in that district as required, among other qualifications, by Section 69 of the same Act, "in order to be qualified to vote for representatives."

The fact being undisputed for the purposes of this case that Mr. Dreier is not eligible to be a representative, the sole question is whether the Secretary should omit his name from the official ballot, or rather whether this court should compel him to do so. The statutory provisions involved are Sections 56 and 89 of the election rules, Civil Laws, pp. 894, 815, as amended by Section 64 of the Organic Act. These read as follows: "Section 56. No person shall be permitted to stand as a candidate for election to the legislature unless he shall be nominated and so requested in writing, signed by not less than twenty-five duly qualified electors of the district in which an election is ordered, and in which he is requested to be a candidate. Such nomination shall, except as hereinafter provided, be deposited with the Secretary of the Territory not less than thirty days before the day of a general election or twenty days prior to a special election, except on the island of Oahu, where such nomination shall be deposited not less than ten days before the day of any election. "Each nomination shall be accompanied by a deposit of twenty-five dollars on account of the expenses attending the election, which amount shall be paid into the treasury as a government realization. "Upon receipt at the office of the Secretary of the Territory of a nomination of a candidate, the day, hour and minute when it was received shall be endorsed thereon. "Provided, however, that in case of the withdrawal or death of a candidate, a new nomination or nominations to replace the name of the person who has died or withdrawn, may be made, irrespective of such limit of time, if the inspectors of election of the districts in which death or withdrawal has taken place, and the fee herein required deposited with them. In such case a voter, while voting may write the name of any such new candidate upon the ballot, and vote for it as herein provided. "Section 89. The ballots used in any representative election district for the election of representatives shall be of uniform size, weight, shape, thickness, and of the same sizing color. "Except as provided in Section 56 hereof, the ballots for each representative election district shall contain the names of all candidates for representatives for such district who have been duly nominated in manner herein provided, and shall contain no other name."

Limitations on Secretary. The last part of Section 89 is clear. On the one hand the ballot SHALL CONTAIN the names of ALL CANDIDATES who have been DULY NOMINATED IN MANNER HEREIN PROVIDED, that is, duly nominated under Section 56. On the other hand it shall not contain the name of any person not duly nominated. In other words the Secretary not only may but should decline to place upon the ballots the name of any candidate if his nomination is not signed by at least twenty-five persons, or if among the signers there are not at least twenty-five qualified electors of the district, or if it is not filed with the Secretary within the prescribed time, or if it is not accompanied by a deposit of twenty-five dollars, etc. The first part of Section 56 is to the same effect, that "no person shall be permitted to stand as a candidate for election to the legislature unless," etc. The duty of the Secretary in these respects is clearly prescribed by the statute. His duty also is ministerial and the courts may enforce its performance. But the Secretary is not authorized to omit the name of a candidate who has been duly nominated, much less is there a duty on his part to do so even though he believes the candidate to be ineligible, and the court cannot compel him to do what it is not his duty to do.

Possible Evils Imaginary. Counsel for the plaintiff suggest many evils as possible, or as likely to occur, if the names of persons who are ineligible are allowed to be placed upon the ballots and counsel for the nominators of Mr. Dreier suggest other evils if the many delicate and difficult questions that might arise as to the eligibility of a candidate were to be determined by a single executive officer. Such evils are largely imaginary. Practically few of them would be likely to occur at all and they but seldom and there are other remedies provided than through the Secretary or the court. If the electors should vote for an ineligible candidate and if he should receive the largest number of votes and if a certificate of election should be issued to him, the house of which he might claim to be a member could so ascertain and declare him not elected.

The very fact that "each house shall be the judge of the elections, returns, and qualifications of its members" (Organic Act, Sec. 15) is sufficient reason why neither the Secretary nor the courts should undertake to pass upon the question of the eligibility of a candidate except when it is clearly their duty to do so. The jurisdiction of each house of the legislature is exclusive in such cases. Each branch of the government must respect the prerogatives of each of the others. The action of the courts in requiring executive officers to perform ministerial duties under the election law is not a usurpation of jurisdiction vested exclusively in the respective houses of the legislature, but on the contrary is often an aid to that jurisdiction by compelling the performance of acts necessary to enable the house to act. The question of the eligibility of a candidate is different. It may be, though as to this we express no opinion, that even that question would have to be passed upon by the courts in some cases incidentally and even that it would be the duty of each house to apply the law as so construed by the courts, though not compellable to do so.

Prevention of Absurdity. As already stated it is agreed for the purposes of this case that Mr. Dreier is ineligible to membership in the House of Representatives, and since the statute does not in terms authorize the Secretary to pass upon the question of eligibility, the only ground that can be urged in support of the view that he should omit the name from the ballots or that the court should compel him to omit it, is the supposed absurdity of placing on the ballots the name of a person who cannot be elected to or hold a seat in the house, and that therefore the Secretary is on general principles or by implication given the power to pass upon the question of eligibility and to omit the name of an ineligible person, or at least that the court may prevent the perpetration of an absurdity. The answer to this is that the duties of the Secretary are prescribed by the statute and the court is not a panacea for all wrongs or evils. The courts act within certain defined limits. The matter in question is without those limits.

Both because the court cannot compel the performance of what is not a duty under the statute and because the matter in question is within the proper sphere of another branch of the government. The same argument, if sound, would apply to some extent, if not with equal force, to the powers or duties of other officers who may be called upon to act at other stages under the election law. For instance, should the inspectors of election in any precinct rightfully take it upon themselves to decline to count the votes cast for a candidate whom they believed to be ineligible or to send the number of votes cast for such candidate to the high sheriff or sheriff, or should the latter decline to issue a certificate of election to a candidate who has received the largest number of votes because he believed him to be ineligible? Or should the courts step in at each stage and compel such action on the ground that the candidate is ineligible? Perhaps the most instructive case that has come to our notice in this connection is that of People vs. Board of Canvassers, 129 N. Y., 360. In that case a candidate for senator was ineligible but had received the greatest number of votes. The State board of canvassers declined to issue a certificate of election to him. He applied to the court for a writ of mandamus to compel them to do so. The court, consisting of seven judges, was unanimously of the opinion that the duty of the board so far as it was ministerial and enforceable by the courts, but that it could not go behind the returns and inquire into the eligibility of the candidate. The question then arose as to whether the court should compel the board to issue a certificate of election to one who was clearly ineligible. The question was the converse of what it is in the present case. It was what the question would have been here if the Secretary had declined to place Mr. Dreier's name on the ballots and Mr. Dreier had brought proceedings to compel him to place the name on the ballots. A majority of the court five judges applying to that case the general principle that mandamus should not issue to accomplish a wrong or the violation of constitutional provision or except to secure or protect a clear legal right, went into the question of eligibility as a necessary preliminary question to be determined as a basis for determining the other question and, having found that the candidate was ineligible, declined to allow the writ to compel the board to issue a certificate of election. Of course, the candidate could without the certificate go before the senate and there establish the right, if he had a right, to a seat. The minority, two judges, were of the opinion that, in view of the constitutional provision making each house the judge of the elections, returns and qualifications of its own members, the court should not go into the question of eligibility at all but should compel the board to issue the certificate of election, notwithstanding the general rule that mandamus should not issue except to protect a clear right. In other words, according to the reasoning of the majority in that case, the court should not compel the Secretary to omit Mr. Dreier's name and should not compel him to place it on the ballots, although it was his ministerial duty to do so. According to the reasoning of the minority in that case, the court should not only compel the Secretary to omit the name but should, if he did omit it, compel him to place it upon the ballot.

Citations Not Inconsistent. The cases cited in behalf of the plaintiff, State v. Lesner, 103 Mo., 258; State vs. Allen, 63 N. W. (Neb.), 35; State vs. Falley, 76 N. W. (N. D.), 994, are not inconsistent with the foregoing views. On the contrary they seem rather to support them. They go to show that the officer to whom is committed the preparation of the ballots may look into the question of whether the nomination has been made as required by the statute but they also tend to show by implication at least that he cannot go further and inquire into the question of the eligibility of the candidate. Other instructive cases are State vs. Van Camp, 54 N. W. (Neb.), 113; Lucas vs. Ringsrud, 53 N. W. (S. D.), 429; Atkeson vs. Lay, 115 Mo., 538; Price vs. Lush, 9 L. R. A. (Mont.), 467; State vs. Board of Canvassers, 31 Pac. (Mont.), 536; O'Ferrall vs. Colby, 2 Minn., 180; Gullick vs. New, 14 Ind., 93; Maynard vs. Board of Canvassers, 84 Mich., 228, 245; Bingham vs. Jewett, 66 N. H., 382. In our opinion the Secretary has acted according to law so far as appears in this case and the plaintiff is not entitled to have the name of Mr. Dreier omitted from the official ballot. Judgment accordingly.

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