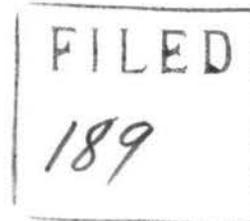


Answer by letter-Wieler

October 10, 1969

OPINION LETTER NO. 189

Honorable Allen S. Parish  
Prosecuting Attorney  
Saline County Court House  
Marshall, Missouri 65340



Dear Mr. Parish:

This is in response to your request for an opinion concerning the relationship of an alleged primary "election" held by some members of the Democratic Party in Marshall, Missouri purportedly to nominate candidates for the city council to the liquor laws of the state, specifically §311.290, RSMo Supp. 1967.

Section 311.290, RSMo Supp. 1967, relating to liquor licenses provides in pertinent part as follows:

"No person having a license under this law nor any employee of such person shall sell, give away or otherwise dispose of, or suffer the same to be done upon or about his premises, any intoxicating liquor in any quantity . . . after 1:30 a.m. upon the day of any general, special or primary election in this state at which candidates for public office are elected or nominated or after 1:30 a.m. upon the day of any county, township, city, town or municipal election at which candidates for public office are elected or nominated, . . ."

Further correspondence with you reveals the following facts with respect to this alleged "election."

1. The Democratic Party candidates for the office of city council are chosen by balloting on the part of all members of the local Democratic Party who wish to participate at this alleged election.

Honorable Allen S. Parish

2. The City of Marshall has no ordinances supervising, controlling, or authorizing this alleged "election" or any alleged election of this type.

3. The City of Marshall is not bound by the outcome of this alleged "election," although the Democratic Party purports to be.

It is our view that the term "election" as used in §311.290 necessarily means that type of proceeding whereby the city or other entity which has a public office to be filled by election is bound by the outcome. Under the facts as given, it is clear that this does not involve an attempt by the City of Marshall, Missouri to select candidates for the public office of city councilman through the elective process, but merely an intra-organization alleged "election" on the part of some members of the local Democratic Party. Since the City of Marshall is not bound by the outcome of this alleged "election," it is our opinion that such proceeding does not constitute an election within the meaning of §311.290, RSMo Supp. 1967.

Therefore, the liquor licensees in Marshall are not required to close down their establishments on the day some members of the Democratic Party hold an alleged "election" in Marshall purportedly to nominate candidates for city council.

Yours very truly,

JOHN C. DANFORTH  
Attorney General