

ELECTIONS: Necessity of registrar elect having property qualification in order to receive certificate of election.

12-27  
December 20, 1934.

Honorable Walter C. Borgelt,  
County Clerk,  
St. Charles, Missouri.



Dear Sir:

This department wishes to acknowledge receipt of your letter dated November 24, 1934, requesting an opinion upon the following proposition, the pertinent portions whereof I am herewith setting forth.

"After the election returns were made it was found that the party on the Democratic ticket received the highest number of votes and therefore was elected. In looking up the law, I find that on page 241 under Section 5, relating to the qualifications that the person so elected must be an owner of real estate in this State. When the party appeared to file her statement of cost under the Corrupt Practice law, and before I issued the Certificate of Election, I asked her if she was a qualified voter of her ward, to which she answered yes, and there is no question about it at all. However, when I asked her if she owned real estate in this State, her reply was no. Thereupon, I advised her of the requirements of Section 5 of the Registration Law, and I have held up the Certificate of Election, until I could get some information thereon. It is my desire to issue the Certificate of Election if I can do so under the law. However, my duty under the law surpasses all desires.

The question that I desire your written opinion on is, can I (as Clerk of the County Court, vested with the authority and duty of issuing Certificates of Election) issue to this party a Certificate of Election, in view of the law setting out the qualifications and requirements. Your reply on this matter will be appreciated."

I believe Section 5 of the Laws of Missouri, 1933, page 241 is decisive of your question. Said Section reads as follows:

"In all cities of this state which now contain or may hereafter contain 10,000 inhabitants and less than 30,000 inhabitants, at each general election for State Officers, there shall be elected

In each election district or ward of such cities, by the qualified voters of such election district or ward, one registrar of election, who shall have the qualifications of an elector in his election district or ward and be the owner of real estate in this State, and who shall hold office for four years and until his successor is elected and qualified. "

I read the phrase "who shall have" as applying to the phrase "be the owner of real estate in this State", so that such law should read for the purpose of interpretation in our instant case, "who shall be the owner of real estate in this State." The use of the verb "shall" indicates a mandatory intention upon the part of the Legislature, and leaves nothing optional to you, or anyone else. It requires a strict fulfillment of the statutory requirements. This, apparently, is the intention of the Legislature as is expressed.

Therefore, it is our opinion that you are without authority to issue a certificate of election in the instant case, unless the party applying therefor has the necessary qualifications.

Respectfully submitted,

HARRY G. WALTNER, Jr.  
Assistant Attorney General

APPROVED:

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ROY McKITTRICK  
Attorney General