

ELECTIONS
SECRETARY OF STATE | Secretary of State to certify name of
candidate receiving highest vote to Govern-
nor. No authority to pass on residence
qualifications.

126 November 29, 1934



Honorable Dwight H. Brown
Secretary of State
Jefferson City, Missouri

Dear Sir:

We have your request for an opinion as to whether or not you should certify the name of N. Elmer Butler as the newly elected prosecuting attorney of Stone County to the Governor for a commission. The question presented is whether or not he has been a resident of Stone County for twelve months prior to the general election of 1934 at which he was elected.

Section 11309, R. S. Mo. 1929 provides that the prosecuting attorney,

" ** shall be a person learned in the law, duly licensed to practice as an attorney at law in this state, and enrolled as such, at least twenty-one years of age, and who has been a bona fide resident of the county in which he seeks election for twelve months next preceding the date of the general election at which he is a candidate for such office ** "

It appears from your letter that the county clerk of Stone County has certified to your office, under the mandate of Section 11312, R. S. Mo. 1929, an abstract of the votes given for each candidate for prosecuting attorney in Stone County at the November, 1934 general election.

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Section 11313, R. S. Mo. 1929 requires the Secretary of State to compare these votes given for the respective candidates and to certify to the Governor the name of the prosecuting attorney elected; and it is made the duty of the Governor, under Section 11362, R. S. Mo. 1929, to issue a commission to the person so certified by you as elected to the office of prosecuting attorney.

Nowhere do we find in the statutes any authority for you to go back of the certified election returns of the county clerk to you, for the purpose of ascertaining whether or not the prosecuting attorney elected was properly qualified. If he does not have those qualifications, then the present incumbent has ample remedy in the courts to test out the legality of the prosecuting attorney's qualifications.

It is, therefore, the opinion of this office that you should certify to the Governor the name of the prosecuting attorney elected to Stone County, as shown by the abstract of votes certified to you by the county clerk, and that you are without authority to pass upon a question of fact, namely, whether or not Mr. Butler possessed the residence qualification to be elected.

Respectfully submitted,

FRANKLIN E. REAGAN
Assistant Attorney General

APPROVED:

ROY McKITTRICK
Attorney General

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