

CITIES OF THE FOURTH CLASS - Candidate in arrears on city taxes on day of election cannot be elected to office.

5-14

May 11th, 1934.

Honorable Leo A. Politte
Prosecuting Attorney
Franklin County
Union, Missouri



Dear Sir:

Your request for a supplemental opinion from this office, enlarging upon the opinion of this office dated April 17, 1934, is as follows:

"I acknowledge receipt of your opinion dated April 7, 1934, concerning the qualification of city candidates receiving the highest amount of votes in Pacific, Missouri.

Since this opinion was requested, these officers have paid their taxes. Your conclusion in this opinion seems to infer that these officers would be qualified to take the oath of office and serve as such city officers, if the payment of these delinquent was made.

Section 6969, Revised Statutes of Missouri, 1929, as quoted in your opinion, seems to forbid the election of anyone to office who shall, at the time, be in arrears for any unpaid city taxes.

Will you kindly supplement this opinion by stating whether or not an officer may qualify after election by paying city taxes in arrears at time of election."

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The pertinent part of the statute under consideration, relating to the election of officers in a city of the fourth class, is the following portion of Section 6969, Revised Statutes of Missouri, 1929,

"No person shall be elected or appointed to any office who shall at the time be in arrears for any unpaid city taxes, "

The statute uses the term "elected". This means that he is not eligible to be voted for on election day. The mere casting of a majority of votes for him on election day is a nullity. The election is fixed for a day certain, and it appears that the term of office begins immediately following the election. - Sections 6949, 6951, Revised Statutes of Missouri, 1929. The election is to be held on the first Tuesday in April, - Section 6949, Revised Statutes of Missouri, 1929, and when this statute fixing the date of the election is construed with Section 6969, the two mean that no person can be elected on the first Tuesday in April who is in arrears with city taxes on the first Tuesday in April. On this one day he must meet the qualification of the statute.

Article II, Section 19 of the Constitution of Missouri provides that,

"no person who is now or may hereafter become a collector or receiver of public money, or assistant or deputy of such collector or receiver, shall be eligible to any office of trust, * in the State of Missouri * * "

The court in that case held that such collector or deputy collector could not be elected treasurer. State ex rel. McAllister v. Dunn, 277 Mo. 38. We must therefore determine the exact meaning of the term "elected", as used in Section 6969, supra. In this matter we must bear in mind State ex rel. v. Carr, 178 Mo. 229, l.c. 233,

"It is one of the cardinal rules for the construction of statutes, that the spirit

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and purpose of the enactment is an invaluable guide to the meaning thereof, for the letter of the law often killeth, while its spirit maketh alive."

Again, in State ex rel. v. Insurance Co. 224 Mo. 84, l.c. 92:

"The prime effort of all judicial interpretation is to ascertain what the Legislature really intended in using the particular language."

A close examination, Section 6969, at once reveals that the spirit and purpose of the act under consideration was to prevent a delinquent tax payer from being elected to a city office, wherein, in his official capacity, in some way he might pass upon the question of delinquent taxes in general. This is manifest from the use of the term "elected". If the Legislature has intended that no city official should take office so long as he was a delinquent tax payer of that city, appropriate language could have easily been found to express that intention. Here the act states that no such person can be elected on the first Tuesday in April who is in arrears for any unpaid city taxes, and Section 6969 further provides that such person cannot be elected "who shall at the time" of election, namely, the first Tuesday in April, be in arrears for any unpaid city taxes.

It is, therefore, the opinion of this office that any person or candidate for public office in a city of the fourth class who on election day is in arrears for unpaid city taxes is ineligible to be elected, and incapable of gaining such public office by election. The subsequent payment of city taxes by the elected official does not remove this disqualification from him which he possessed on election day.

Respectfully submitted,

APPROVED:

FRANKLIN E. REAGAN
Assistant Attorney General

ROY McKITTRICK
Attorney General

PER:ER