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I: RELATING TO QUALIFICATION OF A CANDIDATE FOR OFFICE WHO FAILED TO COMPLY WITH CORRUPT PRACTICE ACT.

II: RELATING TO AUTHORITY OF DRUGGIST TO SELL INTOXICATING LIQUOR ON PRESCRIPTION ON SUNDAY OR ELECTION DAY UNDER INTOXICATING LIQUOR ACT.

5-10  
May 3rd, 1934

Hon. James S. Rooney  
Prosecuting Attorney  
Clay County  
Liberty, Missouri



Dear Sir:

We acknowledge receipt of your letter of date April 14th, 1934 in which your inquire and state as follows:

"I would like to have an expression of your opinion on the following questions:

1. Twelve years ago a citizen here was a candidate for a county office. He was defeated at that time and did not file any statement of his expenses in the campaign. He wishes now to file again for the same office.

Would the fact that he failed to file his statement of expense twelve years ago disqualify him if he were elected now?

2. A druggist here has a license to sell intoxicating liquor in the original package. He also sells straight alcohol marked "For non-beverage purposes."

Is it lawful for him to sell this alcohol on Sunday or election days?

Thanking you in advance for your opinion in the matter, I am."

I.

Failure to comply with section 10482 R.S. 1929 is strictly penal in its nature, and nothing should be included in it which is not clearly described in its very words.

Section 10483 R. S. 1929, relating to the Corrupt Practice Act provides as follows:

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**"FAILURE TO COMPLY WITH PRECEDING SECTION-  
PENALTY.-** Any person failing to comply with the provisions of section 10482 of this article shall be liable to a fine not exceeding one thousand dollars, to be recovered in an action brought in the name of the state by the attorney-general, or by the prosecuting attorney of the county of the candidate's residence, the amount of said fine to be fixed within the above limit by the jury, and to be paid into the school fund of said county."

From the foregoing provision of the statute, it appears that failure to comply with said statute is strictly penal in its nature, and no penalty not clearly described in it should be included. Nothing is said in said statute regarding disqualifying one as a candidate who previously had failed to comply with same, when he or she was a candidate in a previous election.

It will be remembered also that one elected to office does not derive title to his office, if elected, by virtue of a certificate of election, but from his election.

In State Ex Inf. Hawkins v. Hodges, 8 S.W. (2d) 1. c. 883-4, Judge Atwood in ruling the case said in part as follows:

"Our attention is directed only to that part of section 5031, R.S. 1919, which provides that, within 30 days after election, such statement shall be filed with the officer empowered by law to issue the certificate of election and a duplicate with the recorder of deeds; to section 5032, which provides for the assessment of a fine in event of failure so to do; and to section 5033, which provides that no person shall enter upon the duties of any elective office until he shall have filed such statement and duplicate. It must be noted that none of these provisions state that such person shall forfeit title to his office by reason of failure to comply with this statute. This provision is a part of what is generally known as the Corrupt Practice Act. It is strictly penal in its nature, and should be strictly construed. Nothing should be regarded as included in it which is not clearly described in its very words. Even if we regard that portion

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of the statute which provides that no officer authorized by law to issue certificate of election shall issue the same until such statement shall have been so made, verified, and filed, to which reporter has not directed our attention, we must remember that this is a proceeding to try title to an office, and respondent derives title to his office by his election and not by his certificate of election."

Also in State Ex Inf Crow vs. Bland, 144 Mo. l. c. 555, Judge Marshall in ruling the case said in part as follows:

"This act is penal in its every nature and fibre. It provides for punishment as for felonies and as for misdemeanors, and also for forfeiture of office even after the incumbent has received a majority of the votes cast at the election and been inducted into office. The act should therefore be strictly construed, and nothing should be regarded as included in it which is not clearly and intelligently described in its very words."

From the above statute and opinions of our Supreme Court, it appears that one who fails to comply with said statute at the most would be guilty of a misdemeanor and subject to a fine not to exceed the sum of One Thousand Dollars, and nothing more.

We therefore hold that one who was a candidate in an election previously held, who failed to comply with said statute would not on that account be disqualified as a candidate in another election.

II.

A druggist may sell intoxicating liquor to a person (at any time) on prescription from a regularly licensed physician.

Section 4 Laws (Extra Session) 1933, page 79, reads as follows:

"~~DRUGGISTS~~ DRUGGISTS MAY SELL AND PHYSICIANS PRESCRIBE LIQUOR.--Any druggist may have in his possession intoxicating liquor purchased by him from a licensed vendor under a license pursuant to this act, or intoxicating liquor lawfully acquired at the place of acquisition

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and legally transported into this state, and lawfully inspected, gauged and labeled as provided for in this act; such intoxicating liquor to be used in connection with the business of a druggist, in compounding medicines or as a solvent or preservative. Provided, that nothing in this act shall prevent a regularly licensed druggist, after he procures a license therefor in compliance with this act, from selling intoxicating liquor in the original packages, but not to be drunk or the packages opened on the premises where sold, and, provided further, that nothing in this act shall be construed as limiting the right of a physician to prescribe intoxicating liquor in accordance with his professional judgment for any patient at any time, or prevent a druggist from selling intoxicating liquor to a person on prescription from a regularly licensed physician as above provided."

Also section 15 Laws 1933 Extra Session, page 83, reads as follows:

"WHEN LIQUOR MAY BE SOLD.- No person having a license under the provisions of this act 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 on the first day of the week, commonly called Sunday, or upon the day of any general or primary election in this state, or upon any county, city, town or municipal election day."

It will be observed that the restrictions contained in the foregoing law relate to a person licensed under the provisions of the Intoxicating Liquor Act, and not as a druggist who sells upon prescription issued by a regular licensed physician, in case of the latter the law presumes the intoxicating liquor so sold is for medicinal purposes, and not as a beverage.

We therefore held that a sale of intoxicating liquor by a druggist, to a person on a prescription from a regular licensed physician on either Sunday or Election

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day would not be a violation of the Intoxicating Liquor Act.

Respectfully submitted,

W. W. Barnes

ASSISTANT ATTORNEY-GENERAL

APPROVED:

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ATTORNEY GENERAL