

ELECTION CONTESTS: Judgment of Circuit Court constitutes certificate of election, and if deposited with bond, regular in every way, with Secretary of State, the Governor may issue the Commission.

December 9, 1935.

12-11

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



Dear Sir:

This department is in receipt of your letter of November 29 wherein you request the opinion of this office in regard to the Circuit Clerk of Green County. Your letter is as follows:

"We received today the bond of James S. Johnson of Springfield, Mo. in the amount of \$35,000, which states that he has been adjudged by judgment of the Circuit Court elected to the office of Clerk of the Circuit Court of Greene County. No official notification of his election has been received, and no commission has been issued to him by the Governor. This is the case of a contested election and Jack W. McKee has been serving as circuit clerk.

"Please advise what constitutes official notification in a case of this kind."

From the attached certified copy of the judgment of the Circuit Court of Greene County it appears that a contest in the office of Circuit Clerk of said county was recently completed and the contestant, James S. Johnson was awarded the office. The judgment was evidently in conformity with Section 10340, R.S. Mo. 1929, which is as follows:

You mention having received a bond in the amount of \$35,000. We assume this is in conformity with Section 11668, R.S. Mo. 1929, which provides:

"The certificate of the election of any clerk, signed by the presiding judge of the county court, and the bond of every clerk, shall be deposited in the office of the secretary of state, with the approval of the court or judges indorsed thereon."

Section 11669, R.S. Mo. 1929 relates to the taking of the oath and the certificate of election, and is as follows:

"The certificate of his election shall be delivered by the presiding judge of the county court to each clerk elected, which, with the oath of office indorsed thereon, shall be recorded in the office of the recorder of the county, before any other duty of his office is discharged."

The bond should be recorded in the office of the Recorder of Deeds as provided in Section 11671, which provides:

"All bonds of clerks and recorders of deeds shall be recorded in the recorder's office in their respective counties, and then deposited in the office of the secretary of state."

The only section relating to the issuance of a commission by the Governor is Section 11664, R.S. Mo. 1929, which provides:

"At the general election in the year eighteen hundred and eighty-two, and every four years thereafter, except as hereinafter provided, the clerks of all courts of record, except of the Supreme Court, the St. Louis Court of Appeals, and except as otherwise provided by law, shall be elected by the qualified voters of each county and of the city of St. Louis, who shall be commissioned by the governor, and shall enter upon the discharge of their duties on the first Monday in January next

ensuing their election, and shall hold their offices for the term of four years, and until their successors shall be duly elected and qualified, unless sooner removed from office."

CONCLUSION

It appears, as stated in the beginning of this opinion, that James S. Johnson contested the election of Jack W. McKee. McKee was holding the office at the time the contest was instituted, and by virtue of the terms of Section 10340, R.S. Mo. 1929, was entitled to exercise the duties of the office until the contest was decided. It was the judgment and decree of the Court that Mr. McKee deliver to Mr. Johnson all books, records, etc. pertaining to the office of Circuit Clerk of Greene County, and that Mr. Johnson, upon taking the required oath and filing bond, take charge of the office. The statutes are silent as to the procedure in the event of a contested election and the contestant is successful as it relates to the issuing of a commission.

We are of the opinion that the certified copy of the judgment of the court hereto attached constitutes the certificate of election of Mr. Johnson, as contemplated by Sec. 11668, supra, along with the bond, which shall be deposited in your office. We have not examined the bond, but call your attention to the fact that it should be recorded in the office of the Recorder of Deeds before being deposited in your office in conformity with Sec. 11671, supra. If the bond does not show that it has been recorded, we would suggest that your office refuse to accept the same for deposit; however, if the bond is regular, it is the opinion of this department that the Governor may issue a commission for the remainder of the term to Mr. Johnson, as provided in Section 11664, supra.

Respectfully submitted,

OLLIVER W. NOLEN,
Assistant Attorney General.

APPROVED:

JOHN W. HOFFMAN, Jr.,
(Acting) Attorney General.

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