

Under section 10481 R. S. Mo. 1929, the amounts as set forth may be expended by all candidates in the primary and a successful candidate may then expend the same amount in the general election.

March 1, 1935



Honorable Roy Hamlin
House of Representatives
Jefferson City, Missouri

Dear Sir:

This Department acknowledges your request for an opinion on the construction of Section 10481 R. S. Mo. 1929. The precise question involved being as to whether or not the amount to be expended by candidates, and the determination of that applies to a candidate's expenses in the primary or general election, or both.

Section 10481, R. S. Mo. 1929, is as follows:

"No candidate for congress or for any public office in this state, or in any county, district or municipality thereof, which office is to be filled by popular election, shall by himself or by or through any agent or agents, committee or organization, or any person or persons whatsoever, in the aggregate pay out or expend, or promise or agree or offer to pay, contribute or expend any money or other valuable thing in order to secure or aid in securing his nomination or election, or the nomination or election of any other person or persons, or both such nomination and election, to any office to be voted for at the same election, or in aid of any party or measure, in excess of a sum to be determined upon the following basis, namely: For five thousand voters or less, two hundred dollars; for each one hundred voters over five thousand and under twenty-five thousand,

four dollars; for each one hundred voters over twenty-five thousand and under fifty thousand, two dollars; and for each one hundred voters over fifty thousand, one dollar - the number of voters to be ascertained by the total number of votes cast for all the candidates for president in the state, or in any county, district or municipality thereof at the last preceding regular election held to fill the same; and any payment, contribution or expenditure, or promise, agreement, or offer to pay, contribute or expend any money or valuable thing in excess of said sum, for such objects or purposes, is hereby declared unlawful."

We are confronted with the question of the intention of the legislature and the meaning of the phrases, "or aid in securing his nomination or election, or the nomination or election of any other person or persons, or both such nomination and election, to any office to be voted for at the same election." Are the conjunctions "and" and "or" interchangeable, or mean the same thing, or is the conjunction "or" to be used in the conjunctive or disjunctive. Volume 5, Words and Phrases, at page 654 offers enlightening decisions, as follows:

"The words 'and' and 'or' are frequently used interchangeably. State v. Harwi, 230 P. 331, 332, 117 Kan. 74.

Word 'or' in contract may be read as 'and,' and vice versa, as necessity of harmonizing provisions may require, and in order to effectuate intention of parties. Weisman v. Continental Life Ins. Co., 267 S. W. 21, 23, 216 Mo. App. 13.

Words 'or' and 'and' in statutes may be used interchangeably, where

it is necessary to effectuate legislative intent. People v. Trustees of Northwestern College, 152 N.E. 555, 557, 322 Ill. 120.

In construing a statute 'and' may be interpreted to mean 'or', and vice versa, where, by so doing, effect in harmony with legislative intent may be given the statute. Conway's Estate v. State, 120 N. E. 717, 721, 72 Ind. App. 303.

The words 'or' and 'and' in statutes are often used incorrectly, and where a strict reading renders the sense dubious, one may be read in place of the other, in deference to the meaning of the context, in view of St. 1919, sec. 1770b -10. State v. Circuit Court of Dodge County, 186 N. W. 732, 734, 176 Wis. 198.

While 'or' is properly disjunctive, and 'and' conjunctive, they are so frequently used interchangeably that, in construing a statute, 'or' may be read as 'and' if to give it its usual meaning would lead to a manifest absurdity. State v. Steiner, 151 N. W. 256, 267, 160 Wis. 175."

From a complete reading of the statute above, it is evident that it was the intention of the legislature to limit the amount of money or other valuable thing the candidate could expend in seeking the nomination for any office. The terms of the statute must be construed, if possible, so that the meaning gleaned therefrom shall not appear absurd. The two main elections under our election laws of Missouri are, that of primary, wherein party nominees are selected, and general, wherein the nominee of some party is finally elected to the office. We think the amounts set forth in the statute, as a legal expenditure for candidates, apply to each of the elections, namely, primary (nomination)

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and general; that is to say, that a candidate, in his zeal and effort to obtain the nomination for office, may expend the amounts set forth in the statute as legitimate expenses, and if he is successful in obtaining the nomination he may again expend the sums set forth in his attempt to be successful at the general election. To conclude that the sums set forth in the statute could only be used for both elections, would place the candidates in the absurd position of expending one-half of the amounts set forth in the primary (nomination) election and the other half in the general election, and if defeated in the primary would have been precluded from expending the sums he would have been entitled to spend in order to do his campaign full justice.

We believe that the legislature intended that the sums set forth in the statute are at his command, provided he has them, for the purpose of getting a true estimate of his political strength in the primary, and if such estimate becomes a reality and he is so fortunate as to obtain more votes than his opponents, then he is at liberty to again expend the same amount in seeking his final election to the office at the general election. To place any other construction on the statute would be an absurdity and make the statute meaningless.

Respectfully submitted,

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