

ELECTIONS:) Failure of County Clerk to publish notice, as
PRIMARY ELECTIONS:) required by Section 10256, R. S. 1929, of
offices to be filled, does not invalidate
primary or election.

June 6, 1936. 610



Mr. Will W. Horton, Secretary,
Democratic County Central Committee,
Poplar Bluff, Missouri.

Dear Sir:

This is to acknowledge receipt of your letter of recent date in which you requested the opinion of this department. You state in your letter that the "County Clerk of Butler County failed to comply with the Missouri election laws and did not publish a notice of primary election sent out by Secretary of State, Dwight H. Brown, until Saturday, May 16, and then only in one newspaper, the daily American Republic. He has ordered publication in one weekly on Thursday, May 21. As I understand the law, this notice should have been first published not less than ten days after he received it on April 21."

The two sections of the statute pertinent to your question are Sections 10255 and 10256, R. S. Mo. 1929, which are respectively, as follows:

(10255)

"At least ninety days before the time of holding such August primary the secretary of state shall prepare and transmit to each county clerk a notice, in writing, designating the office for which candidates are to be nominated at such primary."

(10256)

"Upon receipt of such notice, such county clerk shall, not less than ten days thereafter, publish so much thereof as may be applicable to his county, once each week, for four consecutive weeks,

in at least two, and not to exceed four, newspapers of general circulation, published in said county."

The latter section gives notice to the voters stating the office for which candidates are to be nominated at the primary election held the first Tuesday of August in the even-numbered years, and also gives notice to those who might desire to file as candidates for offices designated in said notice.

The statutes in most cases require notices of elections to be published in some certain designated manner stating the time and place of said election, whether it be a general election or a special election. The effect of the failure to comply with statutes relative to notices of special elections is very different from the failure to publish notices of a general election, or ones fixed by statute at a definite time and place. While the notice in question is not a notice of an election, it partakes of some of the characteristics of same and is one of the steps to be taken in the selection of candidates for offices to be elected.

As to special elections, a failure to publish the required notice would in most instances invalidate the election, but such is not the case in general elections where the time and place same are to be held are fixed by the statutes.

The rule is announced in 9 R. C. L., pages 990-991:

"It may be stated as a general principle that the calling of an election contemplates the giving of some notice. And it is universally the practice to direct by statute both the manner and the time of giving notice of all elections--those fixed at regularly recurring intervals as well as special elections called for a particular occasion. There is, however, a difference in the necessity for notice in the two classes of elections, and this difference has been recognized by the courts in passing upon questions

arising from a failure to comply with the requirements of the law. As to general elections it has been well established that the fixing of the time for the election either by law or by the constitution is in itself notice which all electors must heed; and hence where an officer is charged with the duty of giving notice of such an election or with the issuing of a proclamation thereof, his failure to perform his duty will not invalidate the election."

Also in 20 Corpus Juris, Section 81, p. 96:

"Where, as in the case of general elections, the time and place of holding the same are fixed by the law itself, statutory provisions as to notice are considered as merely directory inasmuch as electors are bound to take notice of the law, and hence, a general election held at the time and place appointed by law is not invalid because no further notice thereof was given."

The provisions of Section 10256, supra, direct that the County Clerk publish so much of that part of the matter certified to him by the Secretary of State as is applicable to his county. The provisions of this section are directory only and are made with a view to the proper, orderly and prompt conduct and the taking of the necessary steps toward the selection of candidates in the succeeding primary election. While it is the duty of the County Clerk to publish said notice as required by this section, yet, we do not believe that the dereliction or neglect of some officer or for any other reason a failure to publish said notice according to the statute, would invalidate or be fatal to the succeeding primary election. The primary election is fixed at a definite

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date by the statutes, i. e., the first Tuesday in August in the even-numbered years, and the statutes require that a candidate desiring to have his name printed on the ticket must file his declaration of candidacy with the proper official sixty days before the primary election. The statute itself is sufficient notice of those facts.

It is, therefore, our opinion that this section of the statutes, i. e., 10256, supra, is directory, and that any failure of the Clerk to comply strictly with its terms would not have the effect of invalidating the primary election and would not affect candidates regularly nominated at said primary. The officers, however, should strictly follow the statutes and cause to be published all notices therein required.

Very truly yours,

COVELL R. HEWITT
Assistant Attorney-General

APPROVED:

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

CRH:EG