

ELECTIONS - Power to pass on right of person elected to State House of Representatives to be seated therein.



July 28, 1936.

Hon. Walter G. Stillwell,
Prosecuting Attorney of Marion County,
Hannibal, Missouri.

Dear Sir:

A request for an opinion has been received from you under date of July 25th, 1936, such request being in the following terms:

"The opinion of your office is requested on the following question:

In 1931 Mary Sue Hamlin, wife of Roy Hamlin representative in the General Assembly from Marion County, moved to Lewis County Missouri for the purpose of actively managing a large farm which was owned in fee simple by Mrs. Hamlin. At the time of her removal from Marion County Mrs. Hamlin took her children with her and placed them in the schools of Lewis County. After residing in Lewis County for several months Mrs. Hamlin was appointed to the Monticello School Board, later elected to said Board and thereafter was elected President of the Board and now is serving in that capacity. She pays real estate and personal taxes in Lewis County. At the time of her removal from this County Mrs. Hamlin took all of her personal property and effects and did establish her domicile and residence in Lewis County in the homestead where she was born and reared. As your office knows Mr. Hamlin is a resident of Marion County.

Mrs. Hamlin is now running for the Democratic nomination for Representative of Lewis County and the question has been raised as to whether or not she is a resident of Marion or Lewis County and whether or not she can qualify for the Legislature if nominated and

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elected.

At the time Mrs. Hamlin moved to Lewis County it was her intention to establish her residence there and she has at all times voted there."

Your letter, in stating that Mrs. Hamlin has established her domicile and residence in Lewis County, eliminates any necessity of our passing on the question of whether such a domicile and residence was in fact established, and leaves as the only question for our consideration the question of whether, assuming Mrs. Hamlin is nominated and elected, she can qualify and take her seat in the State House of Representatives.

The Constitution of Missouri, Article IV, Section 17, provides in part that "each house * * * shall be sole judge of the qualifications, election and returns of its own members". Under the plain meaning of this language of the Constitution, the House of Representatives has the exclusive power to decide whether or not a person elected to it shall be seated. There are no reported Missouri cases construing the foregoing provision, but such a provision is a usual provision in state constitutions, and has been construed by the appellate courts of many states according to its plain meaning. *People v. Mahan*, 13 Mich. 481; *State v. Gilmore*, 20 Kans. 551 (1878); *Corbett v. Naylor*, 25 R. I. 520, 57 Atl. 303 (1904). And courts are without jurisdiction to assume the function of passing on the right of a person elected to a branch of the state legislature to be seated therein, where such a constitutional provision is in force. *Allen v. Lelande*, 164 Cal. 56, 127 Pac. 643 (1912); *State ex rel O'Donnell v. Judges of Civil District Court*, 40 La. Ann. 598, 4 So. 482.

In conclusion, it is our opinion that the Missouri State House of Representatives is a sole judge of the qualifications of its members, and that such House alone has the right to determine whether a person elected to it may take his seat therein.

Very truly yours,

EDWARD H. MILLER
Assistant Attorney-General

APPROVED:

ROY MCKITTRICK