

ELECTIONS: A person might file a declaration for
committeeman or committeewoman and a
further declaration for public office.

5/29
May 28, 1936



Hon. Mark W. Wilson
Prosecuting Attorney
Henry County
Clinton, Missouri

Dear Sir:

This is to acknowledge your letter dated May 25,
1936, as follows:

"Will you please render an opinion
on the construction of Section
10244 R. S. Mo., 1929, and more
particularly the last provision of
the said section that reads as
follows:-

'and no person shall accept a
nomination to nor be published
as a candidate for more than
one office.'

"Specifically, the query is this:-
Does this provision mean that a
candidate for a public office, either
county or state, cannot also be a
candidate for committeeman for
the township, for his respective
political party? or, is the position
of committeeman such as that it is
not to be construed as an 'office'
within the meaning of this section."

The Legislature, by a statutory enactment, has
provided a plan or scheme for the nominating and election

of persons to office. There is a distinction between the nominating of candidates for office and the election of committeemen or committeewomen to represent the respective political parties.

In State ex rel. Ponath v. Hamilton, et al. 240 S. W. 445, the Supreme Court of Missouri, in Banc, recognized said distinction, having the following to say, page 446:

"The general purpose of a primary election is to nominate candidates for office. Provision is made in the statute regulating these primaries (section 4848, R.S. 1919, (10278, R.S. 1929)), however, for the election, at the time they are held, of committeemen to represent the respective political parties."

Article IV, Chapter 61, relates to nominations and section 10232 of said Article and Chapter reads:

"Any primary election as hereinafter defined, held for the purpose of making nominations to public office, and also electors to the number hereinafter specified, may nominate candidates for public offices to be filled by election within the state. Such nomination shall be made by filing a certificate of nomination, executed with the formalities prescribed for the execution of an instrument affecting real estate."

Section 10233 provides for the certificates of nomination.

Section 10244 relates to "certificate to contain one name," and reads as follows:

" No certificate of nomination shall contain the name of more than one candidate for each office to be filled.

No person shall join in nominating more than one nominee for each office to be filled; and no person shall accept a nomination to nor be published as a candidate for more than one office. "

A reading of Article IV, supra, shows that the Legislature has provided that nominations rest with the individual if such desires to have his name printed on the ballot to be used at the primary election. The ballot used at the primary election contains the names only of the persons filing certificates of nomination and none other. The Legislature provided by the provisions of Section 10244 that a person could not "be published as a candidate for more than one office." In other words, a candidate could not file or be a candidate for more than one office to be filled at the general election.

Article V, Chapter 61, pertains to Primary Elections, and section 10253 of said Article and Chapter reads, in part, as follows:

"Hereafter all candidates for elective offices shall be nominated by a primary election held in accordance with this article. "

Section 10257 provides, in part, as follows:

"The name of no candidate shall be printed upon any official ballot, at any primary election, unless at least sixty days prior to such primary a written declaration shall have been filed by the candidate, as provided in this article, * * * * *."

Provision is made by virtue of Section 10246, R. S. Mo. 1929, that in the event there is a vacancy on the ticket at the general election that the central committee shall have the power to fill same.

Section 10260, R. S. Mo. 1929, also provides, in part, as follows:

"No person shall file more than one written declaration indicating the party designation under which his name is to be printed on the official ballot, * * * ."

In State ex rel. Neu v. Waechter, et al. 58 S. W. (2d) 971, the Supreme Court of Missouri, in Banc, in construing Section 10441, R. S. Mo. 1929, which is similar to Section 10260, said: (page 974)

"There is absolutely nothing in Section 10441 justifying respondents' contention that a candidate cannot seek a nomination for more than one office on the same party ticket. Neither will section 18, art.9, of the state Constitution, bear that construction.

* * * * *

There is, however, a section in the general primary law, section 10244, R.S.Mo. 1929* * * * *which squarely provides 'no person shall accept a nomination to nor be published as a candidate for more than one office.' We shall not attempt to decide whether this statute applies to declarants who file under article 13 of chapter 61, R. S. Mo. 1929* * * * * which includes the sections involved in this case, nor shall we go into the question whether the later filing had the legal effect of vacating

the earlier, for two reasons: First, because section 10244 is not cited by the parties or invoked by the respondents; and, second, because the relator actually filed with the board a withdrawal of his candidacy for alderman and maintains he is a candidate only for nomination for mayor. If this action on his part was valid and effectual, it disposes of the whole matter. "

While the Supreme Court, in the above case, did not interpret the proviso in Section 10244 which concerns us in your inquiry, yet, it is significant that said proviso was called to attention in deciding the question before the court, which, to our mind, indicates strongly that the court would have applied said proviso to the facts before it in that case if the candidate for alderman had not withdrawn. However, in the Waechter case, supra, the candidate filed for two offices that would have been voted upon in the general election, namely, alderman and mayor of the City of St. Louis. In other words, as we read the Waechter case, in the light of the proviso found in Section 10244 no person is entitled to file a certificate of nomination for more than one office at which the candidates are to be chosen at a primary election and the names voted upon at a general election. A committeeman or committeewoman is not nominated at the primary election but is elected at that time, owing to the provision of Section 10278 R. S. 1929 and Section 10278-a Laws of Mo. 1931, pages 208-209. The latter section relates only to the City of St. Louis and is not applicable to the instant question; the former section reads as follows:

At the August primary each voter may write in the space left on the ballot for that purpose the names of a man and a woman, qualified electors of the precinct, or voting district as the case may be, for committeemen for such township, or

voting district; and the man and the woman receiving the highest number of votes in such township, or election district, shall be the members of the party committee of the county, or in the case of a city not within the county, of the city of which such voting precinct, or district is a part: Provided, that any qualified elector in any such voting precinct or district may have his or her name printed on the primary ballot, or party ticket on which he or she may desire to become a candidate for committeeman or committeewoman by complying with the provisions of section 10257."

While Section 10278 provides for a filing of a declaration by a person seeking to have his or her name on the primary ballot, yet, by virtue of Section 10258 a filing fee is not required of such person, thus making a distinction as to committeemen and committeewomen and candidates for other offices as to the paying of a filing fee.

In view of the fact that the Legislature has provided no filing fee to be paid by a person seeking to be a committeeman or committeewoman, and also that committeemen and committeewomen are elected at the primary election, we believe the Legislature did not intend the proviso contained in Section 10244 to be applicable to persons filing for committeemen and committeewomen and for other offices. In other words, a person could, in our opinion, file a declaration for committeeman or committeewoman and at the same time file a declaration and be a candidate for a public office. However, we do not by this opinion hold that a person elected committeeman or committeewoman could hold that office and another office if such happened to be elected to same. While not germane to the subject, we invite your attention to the fact that said offices might be incompatible owing to the language used by the court in *State ex rel. Ponath v. Hamilton*, supra, page 447, as follows:

"The law specifies the terms and prescribes the powers of the

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committeemen. This exercise of power characterizes all statutes defining public officers. The nature of the duties committeemen are required to perform adds force to this conclusion. They are required to receive and disburse the filing fees required to be paid by candidates (sections 4828, 4991, R.S.1919); they prepare and submit lists from which judges and clerks of election are to be appointed (sections 4779,4851,5120,5121,R.S.1919); they fill vacancies on the tickets and to that extent exercise the powers of electors (sections 4815,4816,4838,5004, R. S.1919); they nominate candidates for vacancies on the board of aldermen of the city of St.Louis (sections 21 and 22,R.C. St.L.1914); they appoint challengers and watchers at elections (sections 4776, 4840, 4842, 5003,5004, 5007, 5162,R.S. 1919); they elect their own officers, constitute the congressional committee, and elect the state committee (section 4848, R.S.1919). These powers are all matters of public concern. We held, in effect, in State ex rel. Walker v. Bus, 135 Mo. loc. cit. 332, 36 S. W. 636, 33 L.R.A. 616, that one who receives his authority from the law and, in the performance of same, discharges some of the functions of government, may be regarded as a public officer. "

Yours very truly,

James L. HornBostel
Assistant Attorney General

APPROVED:

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

JMH:LC