

TAXPAYER: Eligibility to hold public office

March 9, 1937

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Honorable Will L. Lindhorst
House of Representatives
Jefferson City, Missouri

Dear Sir:

Replying to your letter of March 8 wherein you
make the following inquiry:

"Would you also define

"If a man's name never appear-
ed on the tax books, personal
or real and his bank president
says he owns bank stock and
the bank pays all the tax and
then prorates the charge against
the dividend would this man be
eligible for any public office
in the city according to 6150
Mo. - R. S., "

we submit the following:

In our original opinion to you defining a "tax-
payer" we quoted from the case of State v. Menengali 307
Mo. 447, wherein the Supreme Court quoted with approval
a very early definition of a taxpayer, as defined in the
case of State v. Macklin 41 Mo. App., said definition be-
ing as follows:

"If a person owns an interest
in property and pays the tax
thereon, he pays his tax regard-
less of the fact to whom the
property is assessed."

Therefore, the question resolves itself into whether
or not by the bank paying the taxes on the stock owned by
a person contemplating being a candidate for public office

constitutes a "bona fide taxpayer" within the meaning of Section 6150, Revised Statutes Missouri 1929.

This question has been decided in the case of Leventhal v. Gillmore 206 N. Y. S. l. c. 125, wherein the court said:

"Stock in a corporation is an evidence of ownership of a certain portion of its property, and the owner receives a dividend on same, from the income of the corporation. Taxes are a fixed charge on the income of a corporation, and the amount of dividend of one's stock is reduced in proportion to the amount of tax paid; and thus, while the actual title to the real estate may be in the corporate name, the actual owner is the stockholder, and a reduction of his dividend by a tax paid is a payment of tax by him, or on his account, on such property.

"In 1906 the Village Law of this state (Laws 1897, c. 414, sec. 42) provided, as to the qualifications of a person elected as president of a village, as follows:

" 'A president * * * must, at the time of his election and during his term, be the owner of property assessed upon the last preceding assessment roll of the village.'

"The qualification of one Remington, elected president of the village of Ticonderoga, N. Y., was assailed on the ground that he owned no property so assessed. It developed that he owned certain stock in the Ticonderoga Electric Light & Power

Company, which corporation was so assessed for real and personal property on the last preceding assessment roll of the said village, and, on an application to remove the said president as such official, the Attorney General of New York held and stated in his opinion therein as follows:

" 'The statute does not require that the candidate must be assessed upon the last preceding assessment roll of the village, but that he must be the owner of property assessed thereon. * * * I am of the opinion that Mr. Remington comes within the spirit and intent of this act. He is the owner, and was at the time of his election, of property which was assessed upon the last preceding assessment roll of the village, and was, therefore, eligible to the office of president of the village. ' Matter of Hoyt, Opinion Attorney General, 1906, p. 248.

"In departing from the wording of the former statutes on qualification, limiting eligibility to assessment of property, and in the adopting of the broader one of 'resident taxpayer' in the latter statute, the Legislature evidently intended to qualify a larger number of available citizens for these public positions, recognizing the fact that many of them might, in fact, be large taxpayers, under the various schemes of taxation now in effect, and yet not be freeholders, or personally on the assessment rolls, and thereby affording

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the municipality the benefit of their ability, experience, and activity in public positions of trust. It therefore follows that, at the time of their appointment as commissioners upon the Utica city lands commission as aforesaid, said Frederick J. Bowne and said Clifford E. Lewis, Jr., were each eligible therefor, and that, at all times since their said appointment, acceptance, and qualifying as such members of said board or commission, each said commissioner has been duly qualified, vested, and clothed with all the powers of said office as provided for in and by said act creating such commission. "

In view of the accepted definition of "tappayer" in Missouri, and the decision of the State of New York, we are of the opinion that a person owning bank stock on which the bank is assessed and pays the tax is eligible to public office under Section 6150, Revised Statutes Missouri 1929.

Respectfully submitted,

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APPROVED:

J. E. TAYLOR
(Acting) Attorney General

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