

ELECTIONS: Person not qualified elector unless registered.

July 18, 1938.

7-19



Mr. H. D. Allison
County Clerk
Buchanan County
St. Joseph, Missouri

Dear Mr. Allison:

This Department wishes to acknowledge your letter and enclosure of July 5, 1938. Your letter reads:

"I am enclosing a copy of a letter received from Dr. L. J. Ferguson who is a candidate for committeeman of the fourth ward, questioning the legality of the candidacy of Elliott Marshall for committeeman of the fourth ward.

"The claim stated by Dr. Ferguson is that Mr. Marshall is a resident of Andrew County and that he is not registered under the new registration law which went into effect September 15, 1937. We have verified the fact that Mr. Marshall is not a registered voter in the City of St. Joseph at this time but we are not in a position to verify whether or not Mr. Marshall maintains a residence in St. Joseph.

"At the time Mr. Marshall filed for office he signed a declaration which states that he is a resident and qualified elector of the City of St. Joseph, State of Missouri and gave his address at 319 N. 20th Street which is in the fourth ward. Should the name of Mr. Marshall appear on the ballot or do we have the right to reject it?"

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And your enclosure is as follows:

"I want to protest against Elliot Marshall's name being allowed to go on the Republican primary ballot in the primary election August 2, 1938. Mr. Marshall lives in Andrew County, is not a registered voter of St. Joseph and did not register at any time since the registration law went into effect.

"I trust you will take this matter up with the proper authority and have his name taken off the ballot."

Section 10278, R. S. Mo. 1929, provides that any qualified elector may have his name printed on the primary ballot as a candidate for committeeman by complying with the provisions of Section 10257, R. S. Mo. 1929. Said Section 10278 provides 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, R. S. 1929."

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Section 10257, R. S. Mo. 1929, provides that the name of no candidate shall be printed upon any official ballot at any primary election unless at least sixty days prior to same he file a written declaration stating, among other requirements, that he is a resident and qualified elector as follows:

"I, the undersigned, a resident and qualified elector of the (____) precinct of the town of (____), or (the ____ precinct of the ____ ward of the city of ____), county of ____ and state of Missouri, do announce myself a candidate for the office of ____ on the ____ ticket, to be voted for at the primary election to be held on the first Tuesday in August, ____, and I further declare that if nominated and elected to such office I will qualify.

(Signed) _____."

You state that you "have verified the fact that Mr. Marshall is not a registered voter in the City of St. Joseph at this time." The question arises whether the fact that he is not registered is sufficient to keep his name off the ballot.

In the case of The State ex rel. Woodson v. Brassfield, 67 Mo. 331, l. c. 336, the court, in determining who were qualified voters, said:

"While the registration law was in force, they only were qualified voters whose names were placed on the registration books. This was the final, qualifying act, and no matter if a citizen possessed every other qualification, if not registered, he was not a qualified voter. It was not the right to register which constituted one a qualified voter, but the fact of being registered as such, was also essential. A qualified voter is one who by law, at an election, is entitled to vote. If, by the law, a person was not

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entitled to vote, whether in consequence of a disability which deprived him of the right to register, or of his neglect to register with a perfect right to do so, he was equally disqualified."

There are a number of other matters that might be considered which we deem unnecessary in view of the above statement.

From the foregoing we are of the opinion that Mr. Marshall, having failed to register, is not a qualified elector within the meaning of Section 10257, R. S. Mo. 1929, supra, and therefore is not entitled to have his name appear on the primary ballot as a candidate for committeeman.

Respectfully submitted,

MAX WASSERMAN
Assistant Attorney-General

APPROVED:

J. W. BUFFINGTON
(Acting) Attorney-General

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