

ELECTION:

Supplemental opinion on election
opinion dated July 18, 1938.

July 21, 1938

7-21



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

Dear Mr. Allison: .

We hasten to acknowledge your letter of July 21,
1938, as follows:

"I am in receipt of your letter of
July 18th relative to the filing of
Elliott Marshall as a candidate for
committeeman of the Fourth Ward in
this City.

Since writing you the letter on
July 5th, Mr. Marshall registered
as a voter on July 11th, which was
the last date on which a person could
register in order to be eligible to
vote in the coming Primary Election.
Mr. Marshall registered under the
address of 319 N. 20th Street, which
is in the Fourth Ward and he claims
that his mother lives at this address
and that he owns property in the
Fourth Ward.

Does the fact that Mr. Marshall is
now a qualified elector make him
eligible as a candidate and entitle
him to have his name appear on the

ballot as a candidate for the office he is seeking?

Our ballots will go to press Saturday, July 23 and we are very anxious to have this matter settled by that time as it will be almost impossible to make any changes in the ballot after Saturday."

In the opinion rendered under date of July 16 this department ruled 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."

We are now advised that Mr. Marshall has registered and the question is whether he is now entitled to have his name appear on the ballot as a candidate for committeeman.

Section 10278, R.S. Mo. 1929 provides in part that any qualified elector may have his name printed on the primary ballot for committeeman by complying with the provisions of Section 10257, R. S. Mo. 1929:

"* * * * * 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 committee-woman by complying with the provisions of section 10257, R. S. 1929."

Section 10257, R. S. Mo. 1929 provides:

"The name of no candidate shall be printed upon any official ballot at any primary

July 21, 1938

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, stating his full name, residence, office for which he proposes as a candidate, the party upon whose ticket he is to be a candidate, that if nominated and elected to such office he will qualify, and such declaration shall be in substantially the following form:

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) _____."

The above statutes declare in clear and unambiguous language that 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 declaring, among other things, that he is a "qualified elector."

Can the statutes, in view of the above language, be construed so as to permit a person having made an erroneous statement, intentional or otherwise, to come in at a subsequent date and qualify?

In the case of Columbia Weighing Machine Company v. Rockwell, 38 S.W. (2d) (Mo. App.) 508, l.c. 510, the court, in holding that where the statute is plain and unambiguous there is no room for construction, said:

"* *We cannot do this, as we are not permitted to construe plain and unambiguous language in a statute. Reay

July 21, 1938

v. Elmira Coal Co. (Mo. App.) 34 S.W.
(2d) 1015."

And the court having held this to be true regardless of the results or wisdom of the law. Thus in the case of *Sleyster v. Eugene Donzelot & Son*, 25 S.W. (2d) 147, 223 Mo. App. 1166, we find the following statement:

"* * * where the meaning of the language used is plain, it must be given effect by the courts (*Betz v. Kansas City Southern Ry. Co.*, 314 Mo. 390, 284 S.W. 455, loc. cit. 461; *Grier v. Railway Co.*, 286 Mo. loc. cit. 534, 228 S.W. 454, loc. cit. 457) without regard to results of the construction or the wisdom of the law as thus construed (*State ex rel. v. Wilder*, 206 Mo. 541, 105 S.W. 272."

It may appear harsh to refuse Mr. Marshall a place on the ballot since he has subsequent to his declaration become a qualified elector. However, as stated we cannot by construction construe a legislative intent contrary to that unmistakably expressed in the language of the statute.

From the foregoing we are of the opinion that the fact that Mr. Marshall is now a qualified elector does not make him eligible as a candidate and entitle him to have his name appear on the ballot as a candidate for committeeman.

With reference to the question of whether a person may vote at St. Joseph if he maintains a legal voting residence there but resides outside of the city, we are pleased to enclose a copy of an opinion rendered by this department under date of October 20, 1936, to Mr. George Priest of St. Louis, Missouri, wherein a similar question was ruled on.

Respectfully submitted,

APPROVED:

MAX WASSERMAN
Assistant Attorney General

J. W. BUFFINGTON
(Acting) Attorney General

MW:DA