

LECTIONS:
OFFICERS:
WOMEN HOLDING OFFICE OF
TRUSTEE IN VILLAGES:

Women may be elected to the office of
trustee in towns and villages.

January 10, 1938

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Mr. Charles E. Murrell, Jr.,
Prosecuting Attorney,
Adair County,
Kirksville, Missouri.

Dear Sir:

This office acknowledges receipt of your request
for an official opinion which is as follows:

"I would like to have an
opinion on the following
question: Can women vote
and hold the office of
trustee in towns and
villages in the State of
Missouri.

The question bothering me,
is the effect of town
ordinances passed by trust-
ees where there is a woman
member of the board of trust-
ees. I would like to call
your attention to the follow-
ing statutes: Sections 7093,
and 7139 R.S. Mo. 1929, and
also to Section 2 of Article
8, of the Constitution of
Missouri."

Section 7093 R.S. Mo. 1929 provides as follows:

"No person shall be a trustee
who shall not have attained
the age of twenty one years;
who shall not be a male cit-
izen of the United States;
who shall not be an inhabitant
of the town at the time of
his election, and reside there-
in for one whole year next

preceding; who shall not be a householder within the limits of such town; and every trustee shall hold his office for the term of one year, and until a successor is elected and qualified."

Section 7139 R.S. Mo. 1929 provides as follows:

"All male persons, of the age of twenty-one years, residing within the limits of any incorporated town or city, and who shall have resided within the same for sixty days next preceding an election, if otherwise qualified by the Constitution and laws of this state, shall be entitled to vote at all elections of town officers; and no property qualification shall be required by any person to render him eligible to any office in any city or incorporated town."

Article 8, section 2 of the Constitution of Missouri provides as follows:

"All citizens of the United States, including occupants of soldiers' and sailors' homes, over the age of twenty-one years who have resided in this state one year, and in the county, city or town sixty days immediately preceding the election at which they offer to vote, and no other person, shall be entitled to vote at all elections by the people; provided, no idiot, no insane person and no person while kept in any poor-house at public expense or while confined in any public prison

shall be entitled to vote, and persons convicted of felony, or crime connected with the exercise of the right of suffrage may be excluded by law from the rights of voting."

Constitutional Amendment number 1 of 1921, page 195
Laws of Missouri, 1921 first and second extra sessions is
as follows:

"Proposed constitutional amendment enabling women to hold any office in this state.

JOINT AND CONCURRENT RESOLUTION submitted to the qualified voters of Missouri an amendment to the Constitution thereof so as to enable women to hold any office in this state.

Be it resolved by the Senate, the House of Representatives concurring therein, as follows:

That at the special election to be held in this state on August 2, 1921, there shall be submitted to the qualified voters of the state for adoption the following amendment to the Constitution thereof:

No person shall be disqualified from holding office in this state on account of sex, and those provisions in the Constitution of Missouri requiring that persons, to be eligible for certain offices, must have been qualified voters for a certain number of years, shall not apply to women who have the necessary qualifications of citizenship until after the nineteenth amendment to the Constitution of the United States shall have been in effect an equivalent number

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number of years.

For proposition No. 2 at August election (Constitutional Amendment No. 1), 159,230; against, 147,751."

From your inquiry it appears that there is a confusion in the provisions of Sections 7093 and 7139 R.S. Mo. 1929 and with the constitutional provisions relating to the rights of women to vote, however, upon an examination of the provisions of the constitution and the constitutional amendment above cited, it appears that women have been given the right to vote and the right to hold office.

"In *Rose v. Sullivan* (1919) 56 Mont. 480, 185 Pac. 562, where the question presented was, 'Can a woman, otherwise qualified, be denied the right to hold the office of county auditor because of her sex,' under a statute providing, in effect, that the auditor should be some 'male person,' it was held that since the Suffrage Amendment had effect to strike from the constitutional provision describing the qualifications for voters the word 'male,' and any person qualified to vote is eligible to be elected to state office, it also had the effect to strike from the statute the word 'male,' so that women are now eligible to be elected to the office of auditor."
(At 71 A. L. R., page 1334)

It further appears that there is a conflict in the sections of the statutes hereinbefore cited and in the provisions of the constitution and the constitutional amendment. Volume 12, *Corpus Juris*, page 725, section 97, is as follows:

"While a new constitution is, by its very nature, intended to supersede a prior constitution, it is not intended to supersede the entire body of statutory law. To the extent, therefore, that existing statutes are not expressly or impliedly repealed by the constitution, they remain in full force and effect. However, statutes

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may be nullified, in so far as future operation is concerned, by a constitution as well as by statute; and the constitution, as the highest and most recent expression of the law-making power, operates to repeal, not only all statutes that are expressly enumerated as repealed, but also all that are inconsistent with the full operation of its provisions."

In the case of Kansas City, Ft. Smith and M.R. Company, v. Thornton, 152 Mo. 570, 575, we find that the court said:

"***** It is the duty of the courts to enforce the organic law and to brush aside any statute which conflicts with it whether it was passed before or after the Constitution was adopted ***."

CONCLUSION

It is therefore the opinion of this department based upon the constitutional provisions hereinbefore cited and the cases cited that women have a right to vote and to hold the office of trustee in towns and villages in the State of Missouri provided they have the other qualifications prescribed for voters and office holders.

Respectfully submitted,

TRYE W. BURTON
Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

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