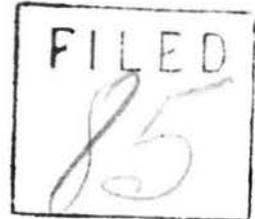


- I. ELECTIONS: Each candidate for office at primary election
CHALLENGERS: may not have challengers or witnesses within
the polls but such challengers are selected
by the committeeman and committeewoman of such
precinct.
- II. COUNTY COURT: Instruction of judges of election.
County court not required to instruct judges of
primary election.
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Honorable Lloyd C. Stark,
Governor of the State of Missouri,
Jefferson City, Missouri.

Attention: Mr. R. E. Holliday

Dear Sir:

I.

The first paragraph of your request pertains to the rights of a candidate who is seeking the nomination in a primary election to have a personal representative to witness the counting of the votes at such primary election.

Section 10270, R. S. Mo. 1929 on the question of challengers at primary elections is as follows:

"The county, ward or township committeeman of each party in each county, or the ward committeeman in any city with a population of over 300,000, may appoint two party agents or representatives, with alternates for each, who may represent his party at the polling place in each precinct during the casting, canvass and return of the vote at a primary, who shall act as challengers and witnesses to the count of the vote for their respective parties, and have the power prescribed by law."

By this section a challenger for each party for each polling place in the county or city is selected by the county, ward or township committeeman.

Section 10206, R. S. Mo. 1929 sets out the manner of the selection of judges for the general election law and also the manner of counting the votes. This section provides in part as follows:

"* * * * * No person or persons shall be admitted into the room or office where such ballots are being counted, except the judges and clerks of election: Provided, that any political party may select a representative man who may be admitted as a witness of such counting. * * * * *

While this section does not specifically state how the political party is to select its representative to witness the counting of the ballots, yet by reading this section with Section 10270, supra, we are of the opinion that the representative of the party mentioned in Section 10206, supra, is to be selected in the same manner that the challenger mentioned in Section 10270, supra, is selected, that is, by the county, ward or township committeeman of each party in such county or city selecting one representative to represent his party at the polling place to witness the counting of the ballots.

CONCLUSION

It is, therefore, the opinion of this department that no individual candidate who seeks nomination at a primary election may select his own challengers to voters or witnesses to the vote count to be within the polls at the time of the voting and at the time the ballots are counted, but that such witnesses and challengers must be appointed by the county, ward or township committeeman of each party in each county or the ward committeeman in any city with a population of over three hundred thousand (300,000), except in cities which may have special provisions relating to selection of challengers and watchers such as is set out in Section 43, page 261, Laws of Missouri, 1937.

II.

Your second question goes to the duty of the county court with reference to instructing election judges. Section 10209, R. S. Mo. 1929 provides as follows:

"All judges of elections, appointed under the provisions of this article shall be selected by the county court from a list of persons furnished said court in the form and manner following:
* * * * *

Section 10206, R. S. Mo. 1929 provides in part as follows:

"In all counties in this state, four judges of election shall be appointed by the county court for each election precinct in each of said counties; * *"

Section 10287, R. S. Mo. 1929 provides in part as follows:

"The judges and clerks for primary elections held under this article shall be appointed in the same manner, and possess the same qualifications and consist of the same number as judges and clerks of general elections in this state:
* * * * *"

From this section it is apparent that the lawmakers intended that the judges and clerks of primary elections be selected by the county court as is provided in the general election laws which are Sections 10206 and 10209, supra. In our research on this question we find that the only duty the court has with reference to the judges of elections is to appoint the judges and as the powers and duties of the county court are statutory, such courts are limited by such statutes that confer upon them their powers and duties.

On the question of the instructions to the judges and clerks of the election we find that such judges and clerks receive their instructions as to what the law is by the following sections. Section 10212, R. S. Mo. 1929 provides as follows:

"The secretary of state shall furnish to the several county clerks, and to the register of the city of St. Louis, at least ten days before the next general election, and as often thereafter as may be necessary, a sufficient number of printed pamphlets containing the provisions of the Constitution and laws of the state, prescribing the qualifications and duties of voters and election officers, and imposing penalties upon election officers and voters, and persons attempting or offering to vote in neglect or violation of law. * * * *"

And by Section 10308, R. S. Mo. 1929 it is provided as follows:

"The clerk of the county court of each county shall cause to be printed in large type, on cards, instructions for the guidance of electors preparing their ballots. He shall furnish twelve such cards to the judges of election in each election district, at the same time and in the same manner as the printed ballots. The judges of election shall post not less than one of such cards in each place or compartment provided for the preparation of ballots, and not less than three of such cards elsewhere in and about the polling place, upon the day of election. Said cards shall be printed in large, clear type, and shall contain full instructions to the voters as to what should be done: First, to obtain ballots for voting; second, to pre-

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pare the ballots for deposit in the ballot boxes; third, to obtain a new ballot in place of one accidentally spoiled; also a copy of sections 10252, 10330 and 10332."

Having received the laws and the instructions which are furnished them by the county clerk, the judges and clerks of election, by reading such laws and instructions, will obtain the same information that they did by instructions from the county court if the county court was even authorized to instruct such officers.

CONCLUSION

It is, therefore, the opinion of this department that the county court is not required to and has no authority to specifically instruct the judges of elections for a primary or a general election and that such election officials receive their instructions from the election laws and instructions which are furnished to them by the county clerks.

Respectfully submitted,

TYRE W. BURTON
Assistant Attorney General

APPROVED:

J. W. BUFFINGTON
(Acting) Attorney General

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