

ELECTIONS: Public utility company not entitled to have challengers and watchers in polls in a municipal bond election on the question of incurring indebtedness to buy or build municipal utility plant.

F I L E D 89

September 21, 1938



Hon. Charles R. Timmons  
Attorney at Law  
Carrollton, Missouri

Dear Sir:

This will acknowledge receipt of your request for an opinion which reads as follows:

"I enclose several enclosures which speak for themselves. The facts, briefly, are these:

A special bond election has been called for Sept. 27th to vote on the proposition of whether or not the citizens of the Town of Carrollton shall issue bonds for the construction of a Municipal Water & Light plant. The Town council has appointed all of the judges and clerks of said election, all of whom are favorable to the municipal ownership. Carrollton is a town existing by virtue of a Special Charter, and the only ordinance that we have on the subject is that all elections of every kind shall be governed by the general election laws of the State of Missouri. A request has been made by the Kansas City Power & Light Company, who now furnish the Town electric and water service, for witnesses to the count and challengers. This request has been vigorously denied and refused by the council. That the Kansas City Power and Light Company is an interested party there can be no doubt, as the bond proposition itself is worded 'to build or buy (the existing) electric light plant'. Parenthesis mine."

The proposed election is provided for by Section 7218, R.S. Missouri, 1929, which reads as follows:

"For the purpose of testing the sense of the voters of any incorporated city, town, or village upon a proposition to incur debt as authorized in the preceding section, the council, board of aldermen or trustees, as the case may be, shall order an election to be held of which they shall give notice signed by the city clerk.

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Except as herein provided, such election shall be conducted in the same manner and by the same election commissioners (if there be such election commissioners) judges and clerks and other officers and employes as other elections are conducted."

By the foregoing section, the proposed election should be conducted in the same manner and by the same election officials as other elections. The question then is, how are other elections conducted with respect to challengers and watchers at polls?

The provisions of the 1929 statutes which govern challengers and watchers in primary elections are as follows:

Section 10270 -

"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."

## Section 10271 -

"It shall be the duty of the challenger to challenge and the duty of the judges of election to reject the ballot of any person attempting to vote other than the ticket of the party with which he is known to be affiliated, unless such person, when challenged, obligates himself, by oath or affirmation, administered by one of the judges, to support the party nominees of the ticket he is voting in the following general election. All judges of the election shall have authority and are empowered to administer such oath, or affirmation, and any person offering to vote who shall fail or refuse to take or make such oath or affirmation when demanded by such challenger, or required by any judge, shall not be allowed to vote at such primary election."

## Section 10272.

"The canvass of votes shall be made in the same manner and by the same officers as the canvass of an election. The party chairman of the city in a precinct canvass, of the county in a county canvass, of the state in a state canvass, or some duly appointed agent to represent each party, shall be allowed to be present and observe the proceedings."

From the foregoing, it will be seen that the political parties are permitted to have challengers at the polls and watchers at the canvass of returns at elections. It should be borne in mind that primary elections are held to select candidates for elective offices (Section 10253). The primary election is in reality a method provided by law by which political parties can choose their candidates. Each political party is given the right to name challengers whose duty it is to challenge the right of a voter to participate in the selection of candidates for that party when such voter is known not to affiliate with that party. The results of a primary election determine who shall be the candidates of

particular political parties in the general election, and it is not strange that the Legislature has provided that the political parties to be affected shall have something to do with the selections to be made.

Section 10206, R.S. Missouri, 1929, which controls general elections, provides, among other things, 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."

In the general election, it will be seen that no persons except the judges and clerks are permitted to be present at the count of ballots except that political parties may have a witness at the counting. Political parties are associations of electors having distinctive aims and purposes. In the case of *Kelso v. Cook*, 110 N.E. 987, 994 (8), it is said:

"A 'political party' is an association of voters believing in certain principles of government, formed to urge the adoption and execution of such principles in governmental affairs through officers of like beliefs. They have existed in some form under all systems of government where the people were accorded any political rights. They originated here with the adoption of the Federal Constitution in 1787. In a republican form of government they are a necessity."

We do not think that anyone can claim that a public utility company such as the Kansas City Power and Light Company could, by any strained construction of language, be classed as a political party. In fact, we do not understand that such company makes any such claim. However, the company takes the position that it is an interested party in the proposed bond election and that it represents the side opposed to the people of Carrollton incurring an indebtedness to purchase a municipal water and light plant and that the city council represents the

side in favor of the people incurring such indebtedness, and that therefore, the lineup in the proposed bond election is similar to the lineup of an ordinary election where political parties are arrayed against each other. The company reasons that it stands in a position similar to one political party in an ordinary election and that therefore, it should have the same privileges as a political party in an ordinary election in respect to challengers and watchers.

The fallacy of the company's position is that elections are regulated by statute and that city councils and other officers or agencies charged with the duty of conducting elections can only do what the statutes provide. This is true as to allowing challengers and watchers in the voting places. In 20 C.J. 174, it is said:

"Whether persons other than the election officers and the voters may lawfully be present in a voting place depends upon the provisions of the particular statute. \* \* \* \* \* but it seems that statutes authorizing watchers at elections do not apply to special elections on abstract or economic questions of municipal government upon which political parties themselves divide."

In the case of *In Re Easton City Election Overseers*, 12 Pa. Dist. Rep. 526, the court was passing upon the right of opposing factions in a municipal bond election to have overseers who would correspond to our challengers and watchers. In discussing the case, the court said:

"It is suggested by counsel for petitioners that as the Act of 1893 does not authorize watchers where there are no candidates for offices to be filled, overseers may still be appointed under the Act of 1874 in such cases as now presented, and which, in that particular, is not repealed. But the natural interpretation of all these provisions, it seems, must rather apply them to elections only where there are contests between political candidates for office, and not to special elections on abstract or economic questions of municipal government, upon which political parties themselves divide.

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If these statutes were applicable to an election in the city to determine whether there should be an increase of indebtedness, then the Act of 1874, if not repealed, would be complied with when the court should appoint in each district one Republican and one Democrat, both of whom were in favor of the increase of debt. This would be incongruous.

If the appointments now petitioned for can be required, we give to the expression 'different political parties' a meaning which extends it to embrace those who are supposed to have opposing views upon the subject-matter of the special election.

Political parties are separate organizations, well understood as objects of discriminating legislation, but it is impossible to reach similar results in individual classification."

The Missouri statutes allow challengers and watchers to political parties, but as shown by the foregoing authorities, political parties do not include opposing groups in a bond election.

It might be said in passing that there is one provision in our statutes where challengers are provided for by organizations other than political parties. That provision is found in Sections 10392 and 10393, R.S. Missouri, 1929. These sections provide that opposing campaign committees in elections on Constitutional Amendments shall have the right to have challengers at the polls. The sections provide also how the campaign committee may gain recognition and how any dispute between various committees planning to be the campaign committee of one side of the question shall be settled. While we do not think that even if the situation in Carrollton could be compared in every detail with an election on Constitutional Amendments, the opposing groups in the bond election would be entitled to challengers (since there is no statute authorizing such challengers), yet there is a great difference between the situation provided for in Sections 10392 and 10393 and the

situation in the bond election. For instance, suppose the Kansas City Power and Light Company should claim it has the right to select challengers because it is one opposing group in the election, and at the same time, several groups of citizens should each claim that they represent the opposition to the bond issue. There would be no authority authorized by law to settle the dispute and recognize either group of claimants. Challengers and watchers in bond elections are simply not provided for in our Missouri law.

CONCLUSION

It is, therefore, the opinion of this office that the Kansas City Power and Light Company is not entitled to challengers or watchers to the count in the special election to be held in the City of Carrollton on the 27th day of September, 1938, to test the sense of the voters of said city on the proposition of incurring an indebtedness to build or buy an electric light plant.

Respectfully submitted,

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APPROVED BY:

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