

ELECTIONS:

Secretary of State not required to notify Board of Election Commissioners of St. Louis of candidates for primary who receive their votes solely in the City of St. Louis.

April 28, 1938

of Missouri

Board of Election Commissioners,
For the City Of St. Louis,
208 South Twelfth Blvd.,
St. Louis, Missouri.



Gentlemen:

This will acknowledge receipt of your request dated April 26, 1938, for an official opinion from this office which request is as follows:

"The Board is in receipt of notice from the Honorable Dwight H. Brown, Secretary of State, sent in accordance with Section 10255 R.S. Missouri, 1929, giving the offices for which candidates are to be nominated at the Primary Election to be held on August 2, 1938. This notice does not specifically call attention to the following offices, which according to the records of this office are to be voted for at the same Primary:

Judge, Probate Court, City of St. Louis.
Prosecuting Attorney for the St. Louis Court of Criminal Correction.
Clerk, Circuit Court, Eighth Judicial Circuit.
Clerk, Circuit Court for Criminal Causes, Eighth Judicial Circuit.
Clerk, St. Louis Court of Criminal Correction.
License Collector for the City of St. Louis.

April 28, 1938

Recorder of Deeds for the City
of St. Louis.
Collector of the Revenue for the
City of St. Louis.
Eleven Justices of the Peace.
Eleven Constables.

The notice concludes with the following:
'Such State, county and township offices
as become vacant by expiration of term,
by death, or resignation of incumbent
or vacant for any cause, and which, under
the law, should be filled at the November
Election, 1938'.

The Board asks if this office should be
officially informed as to the specific
offices listed herein for which candidates
are to be nominated at the August 2, 1938,
Primary, and included in the list sub-
mitted by the Secretary of State, dated
April 19, 1938."

Section 10255, R.S. Mo. 1929 reads as follows:

"At least ninety days before the time of
holding such August primary the secretary
of state shall prepare and transmit to
each county clerk a notice, in writing,
designating the office for which candidates
are to be nominated at such primary."

In interpreting Section 10255, R.S. Mo. 1929, Section
10260, R.S. Mo. 1929 should be read in connection therewith.
Section 10260, supra, reads as follows:

"No person shall file more than one
written declaration indicating the
party designation under which his name
is to be printed on the official ballot,
and all declaration papers shall be
filed as follows: 1. For state officers,

April 28, 1938

representatives in congress, courts of appeals and circuit judges, and those members of the senate and assembly whose districts comprise more than one county, in the office of the secretary of state. 2. For officers to be voted for wholly within one county or in the city of St. Louis, in the office of the county clerk of such county or the office of the election commissioners of the city of St. Louis."

As noted, paragraph 2 of Section 10260, supra, sets out:

"For officers to be voted for wholly within one county or in the city of St. Louis, in the office of the county clerk of such county or the office of the election commissioners of the city of St. Louis."

The courts in the cases of State ex rel. v. Roach, 258 Mo. 541, 167 S.W. 1008, and in State ex rel. v. Drabbelle, 258 Mo. 568, 167 S.W. 1016, held that candidates for the nomination of circuit judge in the eighth judicial district comprising the city of St. Louis, must file their declaration of candidacy with the secretary of state.

As stated in your request, I am presuming that you were notified that the circuit judges would be up for election at the primary election to be held on August 2, 1938. Also the offices which you complain of as not having been certified by the secretary of state are all offices which are filled solely within the city of St. Louis. The court in the above cited cases held that in as much as the first subdivision of Section 10260, supra, held that circuit judges must file their declaration with the secretary of state, although the circuit judges are elected solely in the city of St. Louis, they should file with the secretary of state their declaration of intention to run for that office.

When Section 10255 is read in connection with Section 10260, supra, it is evident that the purpose of said Section 10255 is to provide the county clerk, or the Board of Election Commissioners in St. Louis, with information as to what offices nominations are to be made for, as shown by the records of the office of the Secretary of State, so that in publishing the notice required by Section 10256, the county clerk, or Board of Election Commissioners of St. Louis, will have that additional information which they would otherwise not have. They would already have the list of offices for which nominations are to be made of a local nature by the records of their own offices, and when they get a certificate from the Secretary of State required by Section 10255, they would then have the complete list of offices to be voted upon at the coming election, and they could accordingly publish a complete notice.

Likewise, Section 10261 requires the Secretary of State to certify to the county clerk a list of those candidates who have filed their declarations in his office so that the county clerk, or the Board of Election Commissioners in St. Louis, can publish the list of candidates required to be published by Section 10262.

Taking all of the foregoing sections together, it is evident that the Secretary of State is required to furnish to the county clerk, or Board of Election Commissioners in St. Louis, such information as the records of his office show, touching offices to be voted upon, and candidates who have filed declarations for the forthcoming primary election as shown by the records of his office, so that said county clerk or Board of Election Commissioners of St. Louis can publish the notices of election required to be published.

CONCLUSION.

It is, therefore, the opinion of this office that it is not necessary for the Secretary of State to notify

April 28, 1938

a county clerk, or the Board of Election Commissioners, of the city of St. Louis as to which offices are to be voted for at the primary election to be held on August 2, 1938, where such offices are voted upon solely in the city of St. Louis, except as to candidates for the office of circuit judge.

Yours very truly

HARRY H. KAY
Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

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