

ELECTIONS: Nominees for office in city of third class under alternative form of government.

3/23
March 22, 1940



Hon. V. B. Hall, Mayor,
Monett, Missouri

Dear Sir:

This letter confirms telegraphic acknowledgment of your wire asking for an opinion upon the following question:

"May a party be nominated under Section No. 6910 who did not file as a candidate in the primary, but name written therein by voters."

Section 6910 R. S. No. 1929 sets up a complete method for the nominating of officers in a city of the third class under the alternative form of government. It provides in part as follows:

"Candidates to be voted for at all general municipal elections at which a mayor and councilman are to be elected under the provisions of this article shall be nominated by a primary election, and no other names shall be placed upon the general ballot except those selected in the manner hereinafter prescribed. The primary election for such nomination shall be held on the second Tuesday preceding the general municipal election. The judges of election appointed for the general municipal election shall be judges of the primary election, and it shall be held at the same places so far as possible, and the polls shall be opened and closed at the same hours, with the same clerks as are required for said general municipal election. Any person desiring to become a candidate for mayor or councilman shall at least ten days prior to said primary election file with the city clerk a statement of such candidacy in substantially the following form:"

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The laws authorizing primary elections are enacted by the General Assembly under the police power of the state to prevent dishonesty in procuring nominations.

"Statutes passed in the exercise of the police power of the state should be strictly construed." 59 C. J. Par. 656, p. 1106.

"Usually the use of the word 'shall' indicates a mandate, and unless there are other things in a statute it indicates a mandatory statute." State ex rel. Stevens v. Wurdeman, 246 S. W. 189, 1. c. 194.

"The legislature must be intended to mean what it has plainly expressed, and consequently there is no room for construction." State ex rel. v. Hackmann, 314 Mo. 33.

"Where the language of a statute is clear and unmistakable, its meaning clear and unambiguous, there is no room for construction." State ex rel. v. Thompson, 5 S. W. (2d) 1. c. 57.

In Section 6910 the legislature speaks quite plainly. It provides that no one shall be placed upon the official ballot who has not complied with the requirements of the section and been nominated in accordance therewith.

CONCLUSION.

It is the conclusion of this Department that the city clerk would not be authorized to place on the official ballot for the city election, as a nominee, the name of any person who had not been nominated in accordance with the provisions of Section 6910.

Respectfully submitted,

W. O. JACKSON,
Assistant Attorney-General.

APPROVED:

ROY McKITTERICK
Attorney-General.