

ELECTIONS: BOARD OF ELECTION COMMISSIONERS: Certificates of
Nomination filed with Board of Election Commissioners

February 17, 1942

Honorable William Hicks
County Clerk
Jackson County
Kansas City, Missouri

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FILE

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Dear Sir:

This is to acknowledge receipt of your letter in which you request our opinion as to the proper place to file certificates of nomination to fill vacancies existing in the General Assembly from the Sixth and Ninth Districts of Kansas City, Missouri. We understand that on January 30, 1942, the Governor served on the Board of Election Commissioners of Kansas City writs of election to fill said vacancies and calling a special election to fill same.

The question is, should the certificates of nomination be filed with the County Clerk of Jackson County or with the Board of Election Commissioners of Kansas City?

It is our information that the Sixth and Ninth Districts are wholly within Kansas City. We have heretofore, on October 29, 1941, rendered an opinion to Governor Donnell that the writs of election to fill vacancies in the House of Representatives in Jackson County should be directed to the Board of Election Commissioners of Kansas City.

Section 11527, R. S. Mo. 1939, provides:

"Certificates of nomination shall be filed with the secretary of state for the nomination of candidates for offices to be filled by the electors of the entire state, or any district or division of a greater extent than one county. For all other nominations to public offices, certificates of nomination shall be filed with the clerks of the county courts of the respective counties wherein the offices are to be filled by the electors."

Section 11538, R. S. Mo. 1939, provides in part as follows:

"Certificates of nomination filed with the secretary of state shall be filed not more than sixty and not less than thirty days before the day fixed by law for the election of the person in nomination. Certificates of nomination herein directed to be filed with the clerk of the county court of each county shall be filed not more than sixty days and not less than fifteen days before election: Provided, that in case of any vacancy in said nomination, by resignation, death or otherwise, the central committee, or a convention called for that purpose, of the party on whose ticket such vacancy may occur, may select and certify to the election commissioners the name or names of candidates to fill such vacancy: Provided, that the certificates of nomination to fill vacancy shall be filed with the secretary of state not later than fifteen days before the day fixed by law for the election of the persons in nomination and with the board of election commissioners or county clerk not later than ten days before such election:
* * * * *

In Section 11540, R. S. Mo. 1939, Art. 4, Chap. 76, providing for objections to certificates of nomination, we find the following proviso:

"* * * that in all cities having a board of election commissioners, the said board shall perform all the duties herein required of county clerks and be governed in all respects by the provisions of sections 11539 and 11540, the same as county clerks."

It will be noted that all of the above sections are found in Article 4, Chapter 76, R. S. Mo. 1939.

Section 11630, R. S. Mo. 1939, in Article 7, Chapter 76, provides:

"The powers and duties herein given to and imposed upon the clerks of the county courts of the several counties shall be exercised in reference to the city of St. Louis and to Kansas City, and to any other city hereafter having a registration of voters by the board of election commissioners of such city."

While it is true that section 11630 R. S. Mo. 1939, is not now a part of Article 4, Chapter 76, and from reading same one is unable to determine whether the word "herein" as used in said section refers only to Article 7, Chapter 76, or refers to the whole of Chapter 76. We have examined the Session Acts of 1889 at pp. 105-111, and find that what is now Section 11630, R. S. Mo. 1939, was Section 37 in the original act.

In the revision of 1899 we find that what is now Section 11527 was Section 7080; Section 11538 was 7087 and Section 11630 was 7117. All of said sections were in the same article and chapter, namely Article 2, Chapter 102, in the revision of 1899. From this, we have come to the conclusion that the "herein" as used in Section 11630 has reference to the preceding sections, namely Section 11527, 11538 and 11540.

After reading all of the aforementioned sections together and tracing the history of same, we have reached the conclusion that the filing of the certificates of nomination aforesaid, should be made with the Board of Election Commissioners.

CONCLUSION

From the above and foregoing, it is our opinion that the certificates of nomination for the special elections to be held on March 10, 1942, to fill the vacancies in the House of Representatives of the Sixty-First General Assembly from the Sixth and Ninth Districts of Kansas City, Missouri, both of

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which districts are wholly within Kansas City, should be filed with the Board of Election Commissioners of Kansas City, Missouri.

Respectfully submitted,

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Assistant Attorney General

APPROVED:

ROY McKITTRICK
Attorney General

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