

ELECTIONS: Application of Corrupt Practice Act
CORRUPT PRACTICE ACT: to candidate on Non-partisan Judicial
Ballot.

November 17, 1942

Hon. Ernest F. Oakley
Judge of the Circuit Court
St. Louis, Missouri



Dear Sir:

This is in reply to yours of recent date wherein you request an official opinion from this Department on the question of whether or not a person who is selected on the non-partisan judicial ballot is required to file a statement of receipts and expenditures as is provided under Section 11790 R. S. Mo. 1939.

Said Section 11790 reads as follows:

"Every person who shall be a candidate before any caucus or convention, or at any primary election, or at any election for any state, county, city, township, district or municipal office, or for senator or representative in the general assembly of Missouri, or for senator or representative in the congress of the United States, shall, within thirty days after the election held to fill such office or place, make out and file with the officer empowered by law to issue the certificate of election to such office or place, and a duplicate thereof with the recorder of deeds for the county in which such candidate resides, a statement in writing, which statement and duplicate shall be subscribed and sworn to by such candidate before an

officer authorized to administer oaths, setting forth in detail all sums of money, except all sums paid for actual traveling expenses, including hotel or lodging bills, contributed, disbursed, expended or promised by him, and, to the best of his knowledge and belief, by any other persons or person in his behalf, wholly or in part, in endeavoring to secure or in any way in connection with his nomination or election to such office or place, or in connection with the election of any other persons at said election, and showing the dates when and the persons to whom and the purposes for which all such sums were paid, expended or promised. Such statement shall also set forth that the same is as full and explicit as affiant is able to make it. No officer authorized by law to issue commissions or certificates of election shall issue a commission or certificate of election to any such person until such statement shall have been so made, verified and filed by such persons with said officer."

Amendment No. 3, adopted in 1941, established a non-partisan system for nomination, appointment and election of judges of certain courts. Section 3 of this amendment is as follows (Laws of Missouri 1941, p. 723):

"Each judge appointed pursuant to the provisions of this amendment shall hold office for a term ending December 31st following the next general election after the expiration of twelve months in such office. Any judge holding office, or elected thereto, at the time of the election by which the provisions of this amendment become applicable to this office,

shall, unless removed for cause, remain in office for the term to which he would have been entitled had the provisions of this amendment not become applicable to his office. Not less than sixty (60) days prior to the holding of the general election next preceding the expiration of his term of office, any judge whose office is subject to the provisions of this amendment may file in the office of the Secretary of State a declaration of candidacy for election to succeed himself. If a declaration is not so filed by any judge, the vacancy resulting from the expiration of his term of office shall be filled by appointment as herein provided. If such a declaration is filed, his name shall be submitted at said next general election to the voters eligible to vote within the geographic jurisdictional limits of his court, or circuit if his office is that of Circuit Judge, on a separate judicial ballot, without party designation, reading: 'Shall Judge

.....
 (Here the name of the judge shall be inserted)

of the
 (Here the title of the Court shall be inserted)

Court be retained in office? Yes No.'

(Scratch One)

If a majority of those voting on the question vote against retaining him in office, upon the expiration of his term of office, a vacancy shall exist which shall be filled by appointment as provided in Section 1 of this amendment; otherwise, said judge shall, unless removed for cause, remain in office for the number of years after December 31st following such election as is provided

for the full term of such office, and at the expiration of each such term shall be eligible for retention in office by election in the manner here prescribed.

"Whenever a declaration of candidacy for election to succeed himself is filed by any judge under the provisions of this section, the Secretary of State shall not less than thirty (30) days before the election certify the name of said judge and the official title of his office to the clerks of the county courts, and to the boards of election commissioners in counties or cities having such boards, or to such other officials as may hereafter be provided by law, of all counties and cities wherein the question of retention of such judge in office is to be submitted to the voters, and, until legislation shall be expressly provided otherwise therefor, the judicial ballots required by this section shall be prepared, printed, published and distributed, and the election upon the question of retention of such judge in office shall be conducted and the votes counted, canvassed, returned, certified and proclaimed by such public officials in such manner as is now provided by the statutory law governing voting upon measures proposed by the initiative."

Throughout this section and at other places in the amendment the judges are referred to as "candidates" and the time and place of determining whether such judges shall be retained is referred to as "an election." Since this is a new procedure in Missouri we have no case law to refer to. However, from a reading of the entire act it seems that the person who desires to succeed himself and submit his name to the voters would be considered as a candidate at an election. This election is carried on as any other election, as it applies to ballots, voting and casting up returns.

Section 11790 R. S. Mo. 1939 applies to every person who is a candidate " * * * at any election for a state, county, * * * office," and since a candidate for circuit judge would fall within that classification, it follows that such candidate is subject to the provisions of Section 11790 and should file a statement of receipts and expenditures as is required by said section.

CONCLUSION

It is, therefore, the opinion of this Department that a person who seeks election on the non-partisan judicial ballot should make out and file a statement of receipts and expenditures as is contemplated by Section 11790, R. S. Mo. 1939.

Respectfully submitted,

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APPROVED:

ROY McKITTRICK
Attorney-General

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