

CITY COMMITTEE: A political party of the City of Independence has a right to select a city committee to perform such duties as are given either expressly or by custom and practice.

February 24, 1942

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Mr. John Francis Thice
Attorney at Law
Independence, Missouri



Dear Mr. Thice:

We acknowledge receipt of your letter of recent date requesting an opinion, which reads as follows:

"The undersigned is Chairman of the City Central Committee of the City of Independence, and has been requested by Mayor Sermon to procure your opinion on the legality of the city committee as now constituted.

"For many years back, so far back in fact that the memory of man runneth not to the contrary, the city has always formed a separate committee independent of the township committee. That practice was followed under the old convention system and is now followed in our city primary.

* * * * *

"It has been contended by some of the county committee that there is no provision in the state statutes for the selection of a city committee, and that primary elections held for the nomination of city officers must be called by the township committee and not the city committee.

"We contend that the city has as much right to select a city committee as the county has to select the county committee, and that the city committee, selected at the primary election at the time the city officers are nominated, constitutes the only legal committee of the party located within the city.

"Since the Mayor will be a candidate for the office of Mayor for a four-year term, he is very anxious to have the opinion of your office on the subject."

Your question, as we understand it, is whether the county committee elected under the provisions of Section 11572, R. S. Mo. 1939, should perform the duties imposed upon such a committee in connection with the city election of Independence, or whether such duties should be performed by a city committee selected within the confines of Independence.

You state that it is contended by some of the county committee that there is no provision in the state statutes for the selection of a city committee. We readily agree that this is true. It does not follow, however, that since no statutory provision is made for a city committee, that the members of a political party do not have the right to select such a committee. Neither does it follow that since the statutes provide for a county committee, that such a committee has the right to act for and as the city committee. While it is true that the legislature has the right to provide for the election and regulation of political committees, it is also true that when it has failed to do so, the party may act through such committee or committees as it chooses. 20 C. J., Sec. 158, page 136.

We think it plain from a reading of Section 11572, supra, that the committee provided for in said section is a county committee, whose duties are to a certain extent prescribed by law. The statutes do not give this committee any rights or powers in connection with a city election.

We note that the city has always formed a separate committee independent of the county committee composed of the township committeemen. In the case of State v. Becker, 237 S. W. 117, it was held that where the legislature had omitted to provide for senatorial committees in districts containing only one county, that the parties themselves may establish such committees in those districts. The court, at l. c. 121, said:

" * * It is admitted in this case that for 14 years both parties have construed it against relator's claim, and party action for all that time has been carried on upon the theory opposed to that contended for by relator's counsel. This, according to well-known canons of construction, is of importance as pointing to the correct construction of an ambiguous statute.

"Further, the serious character of the result of relator's construction, which has already been pointed out, is to be considered. In the circumstances, under the settled rules of construction, the statute is to be construed as presenting a simple case of legislative omission in so far as concerns senatorial committees in Jackson county. In that situation the party might act through such committee or committees as it chose. * * *"

Judge Graves, in a separate opinion, concurring in that portion of the opinion quoted above, at l. c. 123, said:

"If senatorial committees have been provided for by law, this provision means these statutory committees. If such have not been provided by law, then this provision means such senatorial committee as party practice and custom have established. I understand my learned Brother to so rule."

Mr. John Francis Thice

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We think it is a matter of common knowledge that the political parties in cities throughout the state are represented in city elections by a city committee independent of the county committee.

CONCLUSION

In view of all the above, it is the opinion of this department that a political party of the City of Independence has the right to select a city committee in such manner and with such authority as party practice and custom have established, and that such city committee has the right to perform all duties delegated by such party either expressly or by custom and practice.

Respectfully submitted

JOHN E. TAYLOR
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APPROVED:

ROY MCKITTERICK
Attorney General

JET:HR