

OFFICERS:

A committeeman may not qualify as Constitutional Convention delegate.

April 22, 1943

Hon. William Clark  
c/o Joseph A. Lennon  
Assistant Attorney General  
905 Central National Bank Building  
St. Louis, Missouri



Dear Mr. Clark:

We are in receipt of a letter from Mr. Joseph A. Lennon's office, which letter is as follows:

"William Clark called at my office several days ago and made inquiries with reference to whether or not an opinion had ever been written by your office concerning the question of the availability of himself and Richard FitzGibbon of St. Louis in serving on the Constitutional Convention. Both of these men, as I understand it, are members of the Democratic City Committee - Fitzgibbon from Kinney's ward and Clark from the 21st Ward in the 13th Congressional District:

"It might be that formal request has been made of you for an opinion on this subject or that an opinion has already been written. I suggested to Mr. Clark that the proper party to request an opinion would be either himself or the Chairman of the Democratic City Committee. However, he asked me to send you this communication to find out whether or not such a request had been made in the past and if not, Mr. Clark is making such a request to ascertain his status."

There is no question but that a committeeman is an officer, within the meaning of the law, and I send you herewith a copy of an opinion written by Hon. J. W. Burke, Assistant Attorney General, dated January 16, 1943, in support of this proposition. Said opinion also holds that the same person cannot be both senator and committeeman at the same time.

Section 3, Article XV of the Constitution of Missouri provides that:

"\* \* \* and each delegate shall possess the qualifications of a senator; and no person holding any other office of trust or profit (national guard officers, school directors, justices of the peace and notaries public excepted) shall be eligible to be elected a delegate to the convention nor during the term for which he shall have been elected or appointed. \* \* \* \* \*"

You will note that the opinion written by Mr. Burke cites from Section 12, Article IV of the Constitution of Missouri, which section is as follows:

"No Senator or Representative shall, during the term for which he shall have been elected, be appointed to any office under this State, or any municipality thereof; and no member of Congress or person holding any lucrative office under the United States, or this State, or any municipality thereof (militia officers, justices of the peace and notaries public excepted), shall be eligible to either house of the General Assembly, or remain a member thereof, after having accepted any such office or seat in either house of Congress."

From the above citations, it is obvious that one person cannot be both delgate to the Constitutional Convention and Committeeman.

From the language of Section 3, Article XV, above quoted, it seems that one cannot be elected a Delegate to the Constitutional Convention while holding an office of City Committeeman. For further proof that a Committeeman is an officer, I submit herewith an opinion of this office, written by F. J. Allebach, and dated June 10, 1938.

In the case of State v. Bowman, 124 Mo. App. 549, The Springfield Court of Appeals, in discussing the term "officer" and a person holding two offices as being against public policy, said at pages 557 and 558:

"A great statesman has voiced the basic principles governing official conduct by declaring that: 'A public office is a public trust.' Like a trustee, such officer must not use the funds or powers entrusted to his care for his own private gain or advancement. To allow him to do otherwise is against public policy. It is of the utmost importance that every one accepting a public office should devote his time and ability to the discharge of the duties pertaining thereto without expectation of personal reward or profit other than the salary fixed at the time of accepting the same; and that he should do so, except for a most weighty reason, to the end of his term. Certainly the trend and policy of our law in this respect is to remove from public officials, so far as possible, all temptation to use that official power, directly or indirectly, to increase the emoluments of such office; \* \* \* \*".

It is quite possible that a committeeman could use his influence as committeeman in securing his election to the office of Delegate to the Constitutional Convention.

CONCLUSION

It is therefore the opinion of this department that a committeeman cannot also be a Delegate to the Constitutional Convention.

It is also our opinion that under Section 3, Article XV of the Constitution, a person holding the office of committeeman is an officer of trust, and is not eligible to be elected a Delegate to the Constitutional Convention.

Respectfully submitted,

LEO A. POLITTE  
Assistant Attorney General

APPROVED:

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ROY MCKITTRICK  
Attorney General

LAP:NSH