

CONSTITUTION CONVENTION: Method of nominating
delegates to the Constitutional
Convention.

February 16, 1943

Mr. E. G. Sullivan
Chairman
Jackson County Democratic Committee
1001 Gloyd Building
Kansas City, Missouri



Dear Sir:

We are in receipt of your letter of February 12, 1943, in reference to the selection of delegates to the Constitutional Convention from the Fifth and Seventh Senatorial Districts of Jackson County, Missouri.

In reply to the same, we are submitting the following:

Section 11575 R. S. Missouri, 1939, reads as follows:

"The county committee, or city committee, as the case may be, shall be composed of the committeemen and committeewomen elected in the several townships, or voting districts, at the August primary next preceding, and shall meet at the county seat of the several counties of this state, and at such place in any city not within a county as the chairman of the then city committee may designate, on the third Tuesday in August of the year in which the primary election is held, and organize by the election of one of its members as chairman, and one of its members as vice-chairman, one of

whom shall be a woman, and a secretary and a treasurer, one of whom shall be a woman, but who may or may not be members of the committee." (Underscoring ours.)

The above section applies to all counties. Under this section a county committee shall consist of a committeeman and committeewoman, elected in the several townships or voting districts in the August primary, and shall meet at the county seat of the several counties of this State and designate one of its members as chairman, and one of its members as vice-chairman. One of whom shall be a woman.

Section 4848 R. S. Missouri, 1919 was passed upon in the case of State ex rel Kimbrell v. Becker, 237 S. W. 117. In that case the senatorial committee of the Fifth and Seventh Districts in Jackson County was involved. The court in that case held that Section 4848 R. S. Missouri, 1919 was not applicable to Jackson County. The decision in that case was en banc on January 14, 1922.

Section 4848 R. S. Missouri, 1919, was repealed by the Laws of 1923, page 197, and was re-enacted into what is now Section 11576 R. S. Missouri, 1939.

Section 11576 R. S. Missouri, 1939, is applicable to Jackson County, by reason of the fact that it applies to counties having more than one legislative district, - that is, senatorial district.

Section 11576 R. S. Missouri, 1939, partially reads as follows:

"In all counties of this state now, or hereafter, having more than one legislative district, in addition

to the county chairman and vice-chairman, as provided in section 11575, there shall be elected a chairman and a vice-chairman, one of whom shall be a woman, for each such legislative district, and the county committee and legislative district committees shall each at the same time elect a secretary and a treasurer; one of whom shall be a woman, but who may, or may not be, members of said committee, and the chairman and the vice-chairman so elected shall by virtue thereof become members of the party congressional, senatorial, and judicial committees of the district of which their county is a part: * * * * ."
(Underscoring ours.)

Under the above section the chairman and vice-chairman, as set out in Section 11575, supra, and the chairman and vice chairman for each senatorial district so elected shall by virtue thereof become members of the senatorial districts of which Jackson County is a part.

The following rule has been set out in 20 C. J. Page 104, Section 90, as follows:

" * * * In the absence of constitutional or statutory provisions to the contrary, the authorities of a political party, such as state and county executive committees may, in accordance with party usage, make and enforce reasonable regulations relating to nominations within the party; and some statutes regu-

lating the mode of nominations, except nominations for certain local offices, provide that they shall be made in the manner prescribed by party committees. * *"
(Underscoring ours.)

It will be noticed under the above rule that the committee may make reasonable regulations relating to the nominations within the party. However, in this State we have a constitutional provision which sets out the manner in which the delegates to a constitutional convention shall be nominated. This section is Section 3, Article XV of the Constitution of Missouri, which partially reads as follows:

" * * * The electors of each senatorial district of the state, as then organized, shall elect two delegates as herein provided at such election, and the electors of the state voting at the same election shall elect fifteen delegates-at-large, such election to be conducted as provided by law; 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. In order to secure representation from different political parties in each senatorial district, each political

party as then authorized by law to make nominations for the office of state senator in each senatorial district shall nominate only one candidate for delegate from such senatorial district, and such candidate shall be nominated in such manner as may be prescribed by the senatorial committee of the respective parties, and a certificate of nomination shall be filed in the office of the secretary of state at least thirty days before such election, and such candidate shall be voted for, each on a separate ballot with emblem or party designation, and each elector shall have the right to vote for one of such candidates, and the two candidates receiving the highest number of votes in each senatorial district shall be elected; * * * * * ."
 (Underscoring ours.)

In the above partial section the following appears:

"* * * and such candidate shall be nominated in such manner as may be prescribed by the senatorial committee of the respective parties, * * * * * ."

It particularly states in such manner, and does not say or prescribe a reasonable manner. For that reason it is purely in the discretion of the committee as to the manner they may prescribe for the nomination of delegates to the constitutional convention. This partial section is self-enforcing, for the reason that the legislature is not required to pass any legislation to permit a

senatorial committee to nominate a delegate by any particular manner. That such a section of the Constitution is self-enforcing was held in the case of State ex inf. Norman, Pros. Atty., v. Ellis, Circuit Court Clerk, 28 S. W. (2d) 363, l. c. 365, where the court in upholding the rule as stated in 12 C. J., Page 729, said:

"The general rule is thus stated in 12 C. J. p. 729:

"It is within the power of those who adopt a constitution to make some of its provisions self-executing, with the object of putting it beyond the power of the legislature to render such provisions nugatory by refusing to pass laws to carry them into effect. * * *

"Constitutional provisions are self-executing when there is a manifest intention that they should go into immediate effect, and no ancillary legislation is necessary to the enjoyment of a right given, or the enforcement of a duty imposed."

"And further, page 730:

"A constitutional provision designed to remove an existing mischief should never be construed as dependent for its efficiency and operation on the legislative will." * * * * *

The legislature cannot interfere with the power of the senatorial committee in prescribing the manner of the nomination of delegates to the constitutional con-

vention for the reason that this section of the Constitution which is an amendment to the original Constitution is a limitation on the legislature and not a grant of legislative power in any manner, and therefore the legislature cannot enact any law which would prohibit the senatorial committee in providing any manner for the nomination of delegates to the constitutional convention. It was so held in *State ex rel Gaines v. Canada*, 113 S. W. (2d) 783.

The above and foregoing part of Section 3, Article XV of the Constitution of Missouri was adopted November 2, 1920, and appears in the *Laws of Missouri, 1921, Page 711*. It is a late amendment and the people of this State have granted that power to the senatorial committee which is in unambiguous language, and needs no construction, other than that the senatorial committee may use any manner which, in its discretion, it deems proper. That it was the will of the people, and is unambiguous was held in the case of *State ex Inf. McKittrick, Atty. Gen., v. Bode*, 113 S. W. (2d) 805, l. c. 808, where the court said:

" * * * We are familiar with the rule that the provisions of the Constitution should be harmonized. However, if said paragraph is unambiguous and in direct conflict with section 10, 'the amendment must prevail because it is the latest expression of the will of the people.' In other words, we are without authority, absent an ambiguity, to resort to interpolation.
* * * * *

It has been suggested that the senatorial committee, upon convening, might adopt a resolution making the committeeman from each ward of Kansas City the repre-

representative of the political party, for such ward, to a convention in such senatorial district, for the purpose of making the nomination. The above portion of Section 3, Article XV of the Constitution of Missouri, specifically states that such candidate shall " * * * be nominated in such manner as may be prescribed by the senatorial committees of the respective parties, * * *." Under this partial section such a procedure could be followed by a resolution or vote of a majority of the senatorial committeemen. Again it has been suggested that all the senatorial committee might do is to prescribe a method of procedure, and such procedure shall be either a primary or convention in which the members of a political party have a voice. Under the portion of Section 3, Article XV of the Constitution of Missouri, mentioned above, we find no limitation to the manner in which the committee may act. It is also suggested that the committee may be considered as limited to merely prescribing a method that should be employed. However, in reading Section 3, of Article XV of the Constitution of Missouri, we find that it states that the candidate shall be nominated in such manner as may be prescribed by the senatorial committee.

The question is also asked: Whether or not a resolution of the committee designating the committeemen from each ward or township as delegates to a convention, for each senatorial district is proper procedure. In view of our conclusions above set out, the committee can be so authorized. It has also been suggested that the ward committeemen in cities, or the township committeemen outside of the cities, may be the official representatives of the political party, and that the senatorial committee could prescribe the convention method, then, upon determining such method, designate the party committeemen from each ward or township, as the representatives of the party to such convention, charged with the nomination of the delegate.

In view of our above conclusions such a procedure would come within the above partially quoted Section 3, Article XV, of the Constitution of Missouri, which does not limit the manner of the nomination of the candidate to the constitutional convention.

After the delegates have been nominated under Section 3, Article XV of the Constitution of Missouri, a certificate of nomination shall be filed in the office of the Secretary of State, at least thirty days before such election. This certificate must conform to Sections 11525 and 11526 R. S. Missouri, 1939, which state that the certificate of nomination must be executed with the formalities prescribed for the execution of an instrument affecting real estate, and also the certificates must bear the name of the political party of which the nominee is a representative.

CONCLUSION

It is, therefore, the opinion of this department, that each political party authorized by law to make nominations for the office of state senator in each senatorial district shall nominate a candidate as a delegate to the constitutional convention from such senatorial district, and such candidate shall be nominated in any manner that may be prescribed by the senatorial committee of the respective parties.

Respectfully submitted

W. J. BURKE
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APPROVED:

ROY McKITTRICK
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