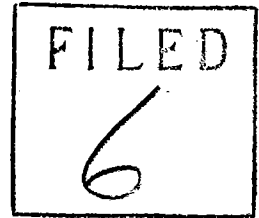


ELECTIONS: Declaration of candidacy for nomination as circuit judge of a judicial district composed of but one county should, under Section 11553, R. S. Mo. 1939, be filed with Secretary of State.

March 18, 1946



H-4

Honorable Wilson Bell
Secretary of State
Jefferson City, Missouri

Attention: P. F. Willis,
Chief Clerk

Dear Sir:

Receipt of your request for an opinion is hereby acknowledged, which reads as follows:

"A question has arisen as to whether the declaration for candidacy for nomination in the case of congressmen, circuit judges or state senators, where their district lies wholly in one county or in the City of St. Louis, should be filed with the Secretary of State or whether it should be filed with the Board of Election Commissioner in St. Louis or the County Clerk in the county in which the district lies.

"We have relied on Section 11553 R. S. Statutes 1939, for our authority in filing the declarations.

"The declarations in question now are as follows: A declaration for Circuit Judge from the 25rd Judicial Circuit comprised of one county, Greene, and a declaration for Circuit Judge from the 25th Judicial Circuit, comprised of one County, Jasper. Should they be filed with the Secretary of State or their respective county clerks."

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Section 11553, R. S. Mo. 1939, referred to in your letter, reads as follows:

"No person shall file more than one written declaration indicating the party designation under which his name is to be printed on the official ballot, and all declaration papers shall be filed as follows:

"1. For state officers, representatives in congress, courts of appeals and circuit judges, and those members of the senate and assembly whose districts comprise more than one county, in the office of the secretary of state.

"2. For officers to be voted for wholly within one county or in the city of St. Louis, in the office of the county clerk of such county or the office of the election commissioners of the city of St. Louis."

Judicial construction of this statute was had in the case of State ex rel. Garesche v. Roach, 167 S. W. 1008, 258 Mo. 541, 1. c. 551, where it is held:

"Even a casual reading of the above section discloses a serious conflict in its provisions, not however in the language used in the section, but in that language when applied to a well-known fact which we judicially notice because embodied in a general law, that is, that the Eighth Judicial Circuit is composed wholly of the city of St. Louis. We must ourselves notice this fact (State v. Pope, 110 Mo. App. 520; Alabama Ins. Co. v. Cobb, 57 Ala. 547; Railroad v. Hyatt, 48 Neb. 161; 1 Chamberlayne, Mod. Ev., sec. 669), and the rules of statutory construction require us to presume, naught else appearing, that the Legislature also held it in mind when the statute was passed. Moreover, the petition herein standing per stipulation as

and for the alternative writ, so charges and on demurrer the truth of all matters well pleaded in the petition is admitted.

"The above section requires by specifically naming these offices that all candidates for 'state officers, representatives in congress, courts of appeals and circuit judges' shall file their declarations of candidacy 'in the office of the Secretary of State.' (All italics are ours.) It further provides generally that all declarations for nomination 'for officers to be voted for wholly within one county, or in the city of St. Louis,' shall be filed in the office of the county clerk of such county, or in the office of the election commissioners of the city of St. Louis. Applying the rule of construction which requires the general provisions of a statute to yield to special provisions, where there is a conflict and where the general expressions in one part of a statute are inconsistent with the more specific provisions in another part of the statute (Rodgers v. United States, 185 U. S. 83; State ex rel. v. Hotel Co., 9 Mo. App. 1. c. 453), we see that candidates for circuit judges are required by a specific provision naming this office to file their declarations with the Secretary of State. We may gather from the whole law a fairly consistent legislative intent to divide the officers into classes, pursuant to which classification (which was as consistent as the facts will permit) those officers who ordinarily are elected from more than one county are required to file declarations with the Secretary of State, while those who ordinarily are elected from a single county are required to file declarations with the county clerk. The only provision which is in any way inconsistent with this view of the legislative intent, is that relating to a state senator whose district is composed of but one county. This legislative intent, save and except that such

inconsistency as to place of filing declarations of candidacy of certain candidates for State senator still inheres, is accentuated by a reference to section 5860 of the same act. Here candidates for nomination for the office of circuit judge are specifically and again by naming the office, required to pay the fee required to the treasurer of the State central committee, while again county officers are put into another class and are required to pay such fee to the treasurer of the county central committee.

"It was early announced as rule of statutory construction in this State that effect shall if possible be given to the whole and every part of a statute. (Riddick v. Walsh, 15 Mo. 519; Macke v. Byrd, 131 Mo. 682; Scott v. Royston, 223 Mo. 568; State ex rel. v. Ryan, 232 Mo. 77; State ex rel. v. Harter, 188 Mo. 516; Strottman v. Railroad, 211 Mo. 227.) This rule is well-nigh universal in all jurisdictions and is without exception, save that the interpretation reached by the application of the rule should be reasonable and not out of accord with the legislative intent. (36 Cyc. 1128, and cases cited.)

"Unless we say that candidates for nomination for circuit judge in the Eighth Judicial Circuit must file their declarations of candidacy with the Secretary of State and not with the Board of Election Commissioners of the city of St. Louis, we are compelled to excise as meaningless from section 5862 the words 'circuit judges.' For we cannot reach this conclusion till we cut out and cast away these words from clause one of the above section. It is persuasive but concededly not in any manner decisive, that still another general classification was in the legislative mind. That is, that county officers (and city officers elected at general elections) were put in one class and all other officers (again, except a

state senator from a single county) were placed in another class.

"These considerations induce us, while conceding the existence of some argument for the other view, to believe that the rules of statutory construction and the great weight of reason lies with the view that declarations of candidacy for nomination for circuit judge of the Eighth Judicial Circuit should be filed with the Secretary of State, and so we hold." (last underscoring ours.)

The same legal principles are applicable to both of the cases presented by your letter and we believe this case to be controlling.

Conclusion

It is, therefore, the opinion of this department that under Section 11583, W. S. L. 1939, the declarations of candidacy for nomination as Circuit Judge of the 23rd and 28th Judicial Districts, each composed of but one county, should be filed with the Secretary of State.

Respectfully submitted,

J. MARTIN ANDERSON
Assistant Attorney General

APPROVED:

J. M. TAYLOR
Attorney General

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