

ELECTION JUDGES:

A candidate for office cannot serve as an election judge at the election in which he is a candidate.

CANDIDATES FOR OFFICE:



October 27, 1952

10-27-52 ✓

Mr. Homer F. Williams  
Prosecuting Attorney  
Bollinger County  
Marble Hill, Missouri

Dear Mr. Williams:

We have given careful consideration to your request for an opinion, which request is as follows:

"I would like your opinion on the following questions relating to the general election laws of the state, as follows:

"1. May a candidate for county office act as an election Judge at the general election, at the general election at which he is a candidate in the county?

"2. May a candidate for county office, who is also a notary, legally, take the acknowledgements of sick absentee voters who are voting absentee ballots, in connection with the affidavit which they make in connection therewith, said votes being residents of and voters of the county in which said notary is a candidate for county office?"

Your second question is answered in the affirmative. In support of this conclusion we herewith enclose a copy of an official opinion of this office written in 1950 for Ralph B. Nevins, Prosecuting Attorney of Hickory County, Missouri.

Your first question is related to Section 111.310, RSMo 1949, which is as follows:

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"No person shall be qualified to act as a judge or clerk of any election unless he shall be legally entitled to vote at such election, and shall moreover be able to read and write."

This statute prescribes certain qualifications for judges and clerks of elections in all counties below the first class. But it does not undertake to enumerate all of the requirements contained in the law. A candidate for office is not disqualified by the contents of this statute. But there is a well-known rule under the common law which holds that a public officer must not perform duties or functions in matters in which he may hold an interest. Any such practice is said to be against public policy.

This principle is stated in 67 C.J.S. 114, as follows:

"Public officers are not permitted to place themselves in a position in which personal interest may come into conflict with the duty which they owe to the public."

The Supreme Court of Missouri has sustained this doctrine in numerous cases. In *Witmer v. Nichols*, 320 Mo. 665, l.c. 671, the court said:

"Nichols as a member of the Board of Directors owed the School District an undivided loyalty in the transaction of its business and in the protection of its interest; this duty he could not properly discharge in a matter in which his own personal interests were involved. The principle is so well settled that we do not deem it necessary to cite authorities."

This principle was also invoked by the Supreme Court in the matter of arbitration in the case of *Schwartzman v. Fire Insurance Company*, 318 Mo. 1089. In the course of that opinion, l.c. 1096, the court said:

"Even though the evidence tends to establish that no conscious or actual

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bias, prejudice, influence or fraud was disclosed on the part of the umpire, yet public policy and an unconscious predilection to favor one's interest renders an arbitrator, directly or indirectly interested in the result of the arbitration, partial, incompetent and disqualified. It is evident from what we have said that the appraisal was void and of no effect, thus obviating the necessity of considering the competency of defendant's appraiser."

An election judge is a public officer whose duties constrain him to expend his best efforts to promote a fair and impartial election. This he can not do if he has a personal interest in the contest, and any candidate for office is certainly interested in the outcome of the election. To permit a candidate to serve would be inconsistent and contrary to public policy in the same sense, but not the same degree, as to permit a party to a lawsuit to serve on the jury in his case.

CONCLUSION

It is the opinion of this office that a candidate for a county office cannot legally serve as an election judge at the general election in the county in which he is a candidate.

Respectfully submitted,

B. A. TAYLOR  
Assistant Attorney General

APPROVED:



J. E. TAYLOR  
Attorney General

Enclosure