

ELECTION COMMISSIONERS: OFFICERS: A president or vice-president of the Missouri Federation, Women's Democratic Club is not disqualified from holding the post of election commissioner of Clay County, Missouri by reason of holding such office in said club.



January 22, 1954

Honorable Stephen R. Pratt
Prosecuting Attorney
Clay County
Liberty, Missouri

Dear Sir:

By your letter of January 12, 1954, you requested an official opinion, in part, as follows:

" * * * an opinion on whether or not a woman holding an office of president or vice-president of the Missouri Federation, Women's Democratic Club, can also be appointed to a County Election Board, and still retain her position as an officer in the Missouri Federation, Women's Democratic Club. * * *"

We presume that the county in which you are interested is Clay County, and, therefore, this opinion is restricted to Clay County. We further presume that the "County Election Board" to which you refer is the Board of Election Commissioners created by Section 119.070, Senate Bill No. 5, 67th General Assembly, appearing in V.A.M.S., Cumulative Annual Pocket Part, which provides as follows:

"1. There is hereby created a board of election commissioners for each county governed by the provisions of this chapter composed of four members who shall be appointed as follows: After this chapter shall become a law, the governor shall

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appoint for each of such counties four members of such board of election commissioners who shall hold their office until June 15, 1957, or until their successors are commissioned and qualified. Two commissioners shall be members of the political party polling the highest number of votes at the last general election for governor, and the other two commissioners shall be members of the political party polling the next highest number of votes for governor at said election. Successors shall be appointed in like manner and their terms of office shall be four years and until their successors are commissioned and qualified. In no case shall more than two members of said board belong to the same political party. In making the appointment of the commissioners the governor shall designate the commissioner who shall be the chairman of the board and the one who shall be secretary of the board; provided the chairman and secretary shall not both belong to the same political party. In case of a vacancy in said board from any cause whatsoever, it shall be filled in the same manner as in the case of the original appointment, save that the commissioner appointed for any unexpired term shall be a member of the same political party as the commissioner whom he succeeds, and in no case shall more than two members of said board belong to the same political party.

"2. Such commissioners shall be legal voters, residents of the state of Missouri for at least five years and of such county for a like term and be of approved integrity and capacity. They shall hold no other public office other than notary public and shall be ineligible to an elective or appointive office during their term of office, and shall before entering upon the duties of said office take and subscribe an oath to support the Constitution of the United States and of this state, and to demean themselves faithfully and impartially in office.

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"3. The said commissioners, or any one of them may be removed by the governor for violation of any provision of this chapter, or for any official misconduct; the governor first giving them, or either one of them as the case may be, not less than ten days notice in writing of all charges against them, or either of them, and affording them, or either of them, an opportunity of being publicly heard in person or by counsel in their or his own defense.

"4. Each commissioner shall give bond to the state in the sum of five thousand dollars with security to be approved by the governor, conditioned for the faithful and honest performance of the duties of said office and the care and preservation of the property thereof.

"5. Said oaths of office and bonds to be filed at the office of the secretary of state. Laws 1953, p. _____, S.B. No. 5, Sec. A(41)." (Emphasis ours).

It is now necessary to determine whether the post which you mention, viz., the office of president or vice-president of the Missouri Federation, Women's Democratic Club is a public office. We think that it is not a public office as contemplated in Paragraph 2 of Section 119.070. The Supreme Court of Missouri in State ex rel. Zevely, v. Hackmann, 254 S.W. 53, approved the following definitions of "public office" l.c. 55:

"A public office is defined to be--

"The 'right, authority, and duty, created and conferred by law, for which for a given period, either fixed by law or enduring at the pleasure of the creating power, an individual is invested with some portion of the sovereign functions of the government, to be exercised by him for the benefit of the public.'"

* * *

"In the most general and comprehensive sense a 'public office' is an agency for the state,

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and a person whose duty it is to perform this agency is a 'public officer.' Stated more definitely, a 'public office' is a charge or trust conferred by public authority for a public purpose; the duties of which involve in their performance, the exercise of some portion of sovereign power, whether great or small. * * *"

The posts of president and vice-president of the Missouri Federation, Women's Democratic Club, have not been created or conferred by law, nor do the persons holding such posts exercise any portion of the sovereign power, or act as agents of the state.

CONCLUSION

It is, therefore, the opinion of this office that a president or vice-president of the Missouri Federation, Women's Democratic Club is not disqualified from holding the office of election commissioner of Clay County, Missouri, by reason of holding such position in said Club.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Paul McGhee.

Very truly yours,

JOHN M. DALTON
Attorney General

PMcG:vlw