

(Opinion request No. 220 answered by this letter.)

May 21, 1962



Honorable Edgar J. Keating
State Senator, Ninth District
Home Savings Building
1006 Grand Avenue
Kansas City 6, Missouri

Dear Senator Keating:

This will acknowledge your letter of May 15, 1962, requesting an opinion of this office, as follows:

"I would appreciate it if you will give me an opinion on the following facts.

"On September 14, 1961, Ben W. Oliver, a resident of the 13th ward, Kansas City, Mo., filed a declaration of candidacy for nomination for the office of Constable in the 2d Magistrate District of Jackson County. On December 20, 1961, the Boards of Election Commissioners of Kansas City, Mo. and of Jackson County, Mo. held a joint meeting for the purpose of considering numerous re-districting plans including the Magistrate District. At that meeting they adopted a plan which changed the boundaries of the 2d Magistrate District in which Mr. Oliver had filed. Mr. Oliver did not refile in the new district. The number of the District was not changed and Mr. Oliver resides in both the old and the new districts. I am enclosing herewith official maps of the Magis-Districts as of September, 1959, and December, 1961, for your information.

"I will appreciate your opinion as to whether Mr. Oliver is entitled to have his name on the primary ballot as a candidate for Constable in the 2d District of Jackson County, Mo."

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Section 19, Article V, of the Constitution of Missouri provides that "after each census" the boards of election commissioners "shall divide counties having more than one magistrate into districts of compact and contiguous territory, as nearly equal in population as may be" This constitutional duty is mandatory, and the necessary effect is that the old districts automatically go out of existence after each census. Within the constitutional limitations, the Board of Election Commissioners may establish districts which are wholly unlike the old districts as to the numbering thereof or the territory comprised therein. Whether it does so or not, the districts are wholly new and come into existence as of the date the Board of Election Commissioners establishes the same. This office so ruled as to Clay County in Opinion No. 57 to Richard E. McFadin, dated February 15, 1962.

The situation is comparable to that pertaining to senatorial and representative districts. In an opinion dated December 27, 1961, to George H. Morgan, this office ruled that in view of Section 3, Article III, of our Constitution creating a duty on the part of the County Court to divide the county into districts, after being notified of the number of representatives to be elected in said county after each census, the old districts go out of existence. Our Supreme Court, in Preisler v. Doherty, 365 Mo. 460, 284 SW2d 427, 1.c. 436, expressly ruled that all senatorial districts must go out of existence after each decennial census. A ruling similar to the Morgan opinion was made by this office under date of August 29, 1951, to Paul C. Calcaterra. In view of all the foregoing and a reconsideration of the applicable constitutional provisions, we are of the opinion that the former magistrate districts in Jackson County went out of existence after the new census, and that it then became the duty of the Board to establish new districts.

Section 63.010, RSMo 1959, which provides for the election of a constable in counties of the first class, provides, in part, that there shall be elected "in each magistrate district in such counties a constable". This can mean only that until the magistrate district is established, there is no magistrate district within which

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a constable may be elected. Hence, it is our opinion that until the new magistrate districts were created, any declaration of candidacy for the office of constable theretofore filed is a nullity, there being no office in existence for which the candidate may seek nomination. In the Morgan opinion, this office so ruled with respect to declarations of candidacy for nomination for senators and representatives in Jackson County. For your information we enclose copies of the three opinions herein cited.

In the opinion of this office, the declaration of candidacy which Mr. Oliver filed on September 14, 1961, for Constable, Second District, is a nullity for the reason that there was no second magistrate district then in existence for which a valid declaration of candidacy could be filed. Therefore, unless there was some action taken by the Board of Election Commissioners which would constitute a refiling of the declaration after the second magistrate district was established, Mr. Oliver would not be entitled to have his name on the primary ballot as a candidate for constable in the Second Magistrate District of Jackson County.

Yours very truly,

THOMAS F. EAGLETON
Attorney General

Enclosures

JN:mc