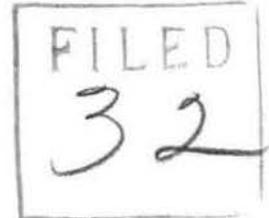


Opinion Answered by Letter (Siddens)

OPINION NO. 32 (1964)
OPINION NO. 466 (1963)

February 19, 1964



Honorable Ronald M. Belt
State Representative
Macon County
115-1/2 Vine Street
Macon, Missouri

Dear Mr. Belt:

Your letter to us dated November 27, 1963, in essence, raises two questions. As to the first question, under the provisions of Section 77.040, RSMo 1959, as amended 1963 (H. B. 250, 72nd General Assembly), can Macon, a third class city organized under Chapter 77, RSMo, by ordinance provide for a city primary election for all elective offices?

Our opinion is that it can. Section 77.040, provides for elections in third class cities under Chapter 77, RSMo 1959. The amendment to Section 77.040 by the 1963 Legislature inserted only the following clause:

"* * * except that the city council may by ordinance provide for the nomination of officers by primary election under the provisions of sections 78.470 to 78.510, RSMo; * * *"

It is clear from this language that the Legislature intended to authorize third class cities under Chapter 77, RSMo, to provide for nomination of city officers by a primary election. The more obscure problem relates to the reference to Sections 78.470 to 78.510. This is so because those sections relate to third class cities with city manager form of government (Sections 78.430 to 78.640). Under city manager form for third class cities, the officers to be nominated and elected are considerably different than the officers to be elected under Chapter 77.

Honorable Ronald M. Belt

The rule is that statutes must be harmonized, if at all possible, to effectuate a valid and operative statute. I believe that the legislative intent was to use Sections 78.470 to 78.510 as to mode, methods, manner, form and time of such primary elections insofar as they can be applied to the nomination of officers to be elected in cities under Chapter 77.

As to your second question, that is, can a city of the third class conduct partisan political primaries and elections for the selection of city officers, please be advised as follows.

A reading of Missouri's statutes indicates the absence of any legislative authorization for such partisan primaries and elections. However, we take notice of the fact that for many, many years various cities throughout the State of Missouri have conducted partisan primaries and elections pursuant to ordinances enacted in said cities and sometimes pursuant to custom. In light of this long standing state of affairs, we are loathe to read into H. B. 250 a legislative intent to abolish these elective procedures long used in the aforesaid various municipalities.

Yours very truly,

J. Gordon Siddens
Assistant Attorney General

JGS:10