SCHOOLS:
SCHOOL DISTRICTS:
ELECTIONS:

In school districts organized under Sections 165.377-165.553 having a population of 75,000 - 200,000 where a city political committee does not exist, nominations of candidates for school directors must be made under Section 165.470 (3), RSMo 1959, i.e., by petition in the manner provided by Sections 120.180 - 120.230 RSMo

The school board of school districts organized under Sections 165.377 - 165.553 having a population of 75,000 - 200,000 have no authority to set forth by rule a method for nominating school board members. In school districts organized under Section 165.377 - 165.553, the school director election must be held in April 1964, even though no city political committee exists.

February 5, 1964

Opinion No. 55

FILED
55

Mr. Hubert Wheeler
Commissioner of Education
Jefferson City, Missouri

Dear Mr. Wheeler:

This opinion is rendered in response to your request of January 2, 1964, for an official opinion of this office. Your inquiry relates to "the method of selection of nominees for membership to the board of education in a school district in a city of 75,000 population where the city charter has eliminated the city political party committees within the city." You have posed the following questions regarding this matter:

"1. Is it mandatory that a district follow provisions as outlined in Section 165.470 in the nomination of board members to be elected even though the party committees have been eliminated?

"2. If there is no central committee in the city, would the local board of education have the authority to establish rules and regulations setting forth a method to be used in the nomination of board members within a district which has a city of more than 75,000?

"3. Is it necessary that a district hold an election for board members in April, 1964, in the city where the central committee has ceased to exist?

"4. If the board has the authority to establish procedures for the nomination of board members, could they establish the same provisions as is outlined in Senate Bill 3 as passed by the 72nd General Assembly?

See Supplement Dated Feb-10-1964

Section 165.470, RSMo 1959, which provides for nomination of school directors in certain districts states, in part:

> "1. In any school district in this state now or hereafter organized or governed as provided by sections 165.377 - 165.553, * * * having a population of more than seventy-five thousand and less than two hundred thousand inhabitants, candidates for school directors may be nominated by a majority of the members-elect residing in such school districts of each political party committee of the city in which said school district is located.
>
> * * * * *
>
> "3. Directors for such school districts may also be nominated by petition in the manner provided by general law."

So far as we have been able to determine, Section 165.470 is the only statutory provision for nomination of school directors applicable to districts organized under Sections 165.377 to 165.553 having a population of 75,000 - 200,000. We note that Section 165.470, RSMo 1959, has been amended by Senate Bill No. 3 of the 72nd General Assembly and will become Section 162.491 in the new codification of School laws to take effect July 1, 1965. See: Section 162.491, RSMo. 1963 Supp., Appendix p. 182. However, Section 165.470, RSMo 1959, states the presently applicable law.

I

Section 165.470, RSMo 1959, sets out the procedure for nominations of members of School boards of districts organized under Sections 165.377 - 165.553 having a population of 75,000 to 200,000 inhabitants. Where the city concerned does not have a city political committee, the only method for nominating school board candidates is by petition under subsection three, to wit:

> "3. Directors for such school districts may also be nominated by petition in the manner provided by general law."

The words "in the manner provided by general law" supra, refer to the Sections 120.180 - 120.230, RSMo, which prescribe the contents, form, and number of names required on nominating petitions. We are aware of the provision in Section 120.150 RSMo 1959, that "Sections 120.140 - 120.230 shall not apply to candidates for * * * school district offices." Section 120.150 excepts Sections 120.140 - 120.230 from applying to school districts generally. Section 120.150 is a general law. Section 165.470 (3) however, is a law of particular application and is to be given effect over any general law inconsistent with it.

> "'Under the established rules of statutory construction where there are two laws relating to the same subject they must be read together and the provisions of the one having a special application to a particular subject will be deemed to be a qualification of, or an exception to, the other act general in its terms.'"
> Veal v. City of St. Louis, Mo., 289 SW2d 7, 12.

As to your first question, it is the ruling of this office that the nomination process set forth in Section 165.470, RSMo 1959, must be followed in districts coming within its terms and that where the city political committee does not exist the remaining method (nomination by petition) must be used for nominations.

II

We turn now to your second question, whether the school board of a district organized under Sections 165.377 - 165.553 having a population of 75,000 to 200,000 has authority to make rules and regulations setting forth a method of nomination.

School district boards have only such powers as are expressly granted by the legislature or as can be necessarily implied from their granted powers.

> " * * * A board of directors is but a creature of statute, and its members can exercise no authority unless the same is either expressly conferred or else arises by necessary implication from the powers that are conferred."
> Cape Girardeau School District No. 63 v. Frye, Mo., 225 SW2d 484, 488.

It is self-evident that a school board could not promulgate regulations which are inconsistent with legislative enactments. The expression of the legislature prevails over any school

district regulation.

> "The Legislature has declared the public policy of this state, * * *. Respondent is merely the instrumentality of the Legislature, created for the purpose of carrying out that policy. It has no power to adopt a rule, or follow a practice, which results in nullifying the expressed will of the Legislature." State ex rel. Springfield Warehouse and Transfer Co. v. Public Service Commission, Mo. App., 225 SW2d 792, 794.

Accord: 73 CJS, Public Administrative Bodies, §94.

The Legislature has set out a method of nominations for school districts organized under Sections 165.377 - 165.553 having a population of 75,000 - 200,000 in Section 165.470 RSMo. 1959. We therefore, rule that school boards of such districts have no authority to set forth another method for nominating board members. This ruling also answers your fourth question.

III

Your third question is, "Is it necessary that a district hold an election for board members in April, 1964, in the city where the central committee has ceased to exist?"

Section 165.383 RSMo 1959 applicable to school districts organized under Sections 165.377 - 165.553 having a population of 75,000 to 200,000 provides:

> "The qualified voters of the school district shall on the first Tuesday after the first Monday in April, in the year 1910, * * * (and) every two years thereafter * * * shall elect two directors * * *." (Parentheses added).

That is, an election of two directors in April 1964 is required by statute. We can conceive of no reason excusing compliance with the statutory mandate.

CONCLUSION

Therefore, it is the opinion of this office that:

1. In school districts organized under Sections 165.377 - 165.553 having a population of 75,000 - 200,000 where a city political committee does not exist, nominations of candidates for school directors must be made under Section 165.470 (3), RSMo 1959, i.e., by petition in the manner provided by Sections 120.180 - 120.230 RSMo.

2. The school board of school districts organized under Sections 165.377 - 165.553 having a population of 75,000 - 200,000 have no authority to set forth by rule a method for nominating school board members.

3. In school districts organized under Sections 165.377 - 165.553 having a population of 75,000 - 200,000, the school director election required by Section 165.383, RSMo. 1959, must be held in April 1964, even though no city political committee exists.

The foregoing opinion which I hereby approve was prepared by my assistant, Louis C. DeFeo, Jr.

Yours very truly,

THOMAS F. EAGLETON
Attorney General

LCD/dg

Supplement

February 10, 1964

Mr. Hubert Wheeler
Commissioner of Education
Jefferson City, Missouri

RE: Opinion No. 55

Dear Mr. Wheeler:

This letter is in response to your telephone inquiry of February 7, 1964. In a recent opinion of this office (Op. 55 to Hubert Wheeler issued February 5, 1964) we ruled:

> "1. In school districts organized under Sections 165.377 - 165.553 having a population of 75,000 - 200,000 where a city political committee does not exist, nominations of candidates for school directors must be made under Section 165.470 (3), RSMo 1959, i.e., by petition in the manner provided by Sections 120.180 - 120.230 RSMo."

Section 120.220, RSMo 1959, states that petitions for nomination under Sections 120.140 - 120.230 shall be filed with the proper officer at least sixty-eight days previous to the day of election. You request amplification of our ruling quoted above as effected by Section 120.220, i.e., does the sixty-eight day provision of Section 120.220 apply to petitions for nomination of school directors under Section 165.470, RSMo. 1959?

Section 165.470 (3) cited in our ruling provides:

> "Directors for such school districts may also be nominated by petition in the manner provided by general law."

Supplement

The answer to your present inquiry is found in the meaning and effect of the phrase, "in the manner".

The particular question here is whether the phrase "in the manner" includes the time provisions of Section 120.220. In the case of Moore v. City Council of City of Los Angeles, Calif., 209 S.W. 64, 66 it was said:

> "Whether the word 'manner' shall be construed as including, not only the way or mode of doing a thing, but also the time of doing it, depends upon the intention of the lawmakers, to be gathered from the context; that is, the 'manner' of doing a thing and the 'time' of doing it are distinct things, and ordinarily the word 'manner' will not be construed as including the element of 'time' unless it shall appear from the context that the lawmakers intended that it should."

Under the Moore rule, supra, unless the intent that the time provisions of Section 120.220 shall apply to Section 165.470 is manifest in the provisions of Section 165.470, the phrase, "in the manner" is not to be construed as including the element of time. No provision of Section 165.470 indicates expressly or impliedly that the Legislature intend the time element of Section 120.220 to apply to nominations of school directors under Section 165.470. Further we are of the opinion that a comparison of the subject matter upon which Section 120.220 and Section 165.470 operate manifest an intent that the sixty-eight day requirement of Section 120.220 shall not apply to nominations of school directors under Section 165.470.

Section 165.470 does not set out procedures for nomination by petition rather, it adopts by reference in subsection (3) "the manner provided by general law." The procedures of general law for nomination by petition are set out in detail by Sections 120.180 - 120.230. If the Legislature intended to adopt the procedures set out in Sections 120.180 - 120.230 literally and entirely, they could have easily done so by definite words to that effect. It is significant therefore that the Legislature did not use such words but instead used the phrase "in the manner". It is our opinion that subsection (3) of Section 165.470 does not adopt every literal detail of Sections 120.180 - 120.230 but only the mode of procedure defined by these sections so far as such is applicable to the subject matter of Section 165.470. The phrase, "in the same manner", has been held to mean "by the same proceedings so far as applicable to the subject matter". State v. Cook, Tex., 14 S.W. 996, 998.

State and county wide elections involve numerous candidates and the procedural complications are many. Nominations must be determined in sufficient time to prepare the ballot.

Section 120.220 principally applies to general elections of state and county officers. In such elections party candidates are nominated by primary election about three months before the general election. Primary candidates are required to file about three months before the primary (§120.340). In this context, Section 120.220, requires nominating petitions to be filed sixty-eight days before election. Section 165.470, however, operates only in elections within a school district. The offices to be filled are few and the candidates not numerous. The ballots are easily prepared. Under subsection (2) of §165.470, nominations by political parties need not be filed until ten days before the election. In this context it is not reasonable to assume that the Legislature intended to require nominations by petition to be filed sixty-eight days before election. The sixty-eight day requirement of §120.220 is not reasonably applicable to the subject matter of §165.470, i.e., the nomination of school board directors.

The sixty-eight day requirement of Section 120.220 fits into the pattern for general elections where all nominations are made well in advance of the election, however, it does not fit into the pattern for school director elections where party nominations may be made up to ten days before the election. Therefore, it is our opinion that the provision of Section 120.220, requiring nominating petition to be filed sixty-eight days before the day of election does not apply to petitions for nomination of school directors under Section 165.470.

Since the sixty-eight day requirement of Section 120.220 does not apply, there is no time set by statute for the filing of nominating petitions under Section 165.470 (3). Therefore, such petitions may be filed at time prior to the election which allows reasonable time for the preparation of the ballots. Since subsection (2) of Section 165.470 allows nominations by political parties to be filed up to ten days of the election, it is our opinion that nominating petitions filed ten days prior to election would be filed within a reasonable time before the election.

We note in closing that Section 165.470, RSMo 1959, as amended by Senate Bill No. 3 of the 72nd General Assembly does not adopt "the manner provided by general law." Thus, the foregoing discussion will have no application after the effective date of Senate Bill No. 3, July 1, 1965. The law, renumbered as Section

162.491, will then provide:

> "3. Directors for urban school districts may also be nominated by petition to be filed with the secretary of the board and signed by a number of voters in the district equal to ten per cent of the total number of votes cast for the director receiving the highest number of votes cast at the next preceding biennial election."

Yours very truly,

THOMAS F. EAGLETON
Attorney General

LCD/dg