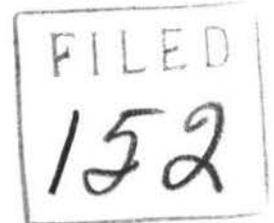


ELECTIONS: With respect to the provisions of Section
ABSENTEE BALLOTS: 112.060, RSMo 1959, in the event that the
COUNTY CLERKS: central committees of the dominant political
parties submit lists of persons who are un-
able or unwilling to serve and are therefore less than double
the number required by law the county clerk or the board of
election commissioners may select persons of the proper political
faith from outside the lists to make up double the number required
and may appoint therefrom. In the event that all of the persons
on the lists submitted by the central committees refuse to serve,
the county clerk or the board may act as though the committee
had failed to present a list of names as required and may, them-
selves, select and appoint the requisite number as required and
provided by law for the party for the purpose of opening and
counting the absentee vote.

OPINION NO. 152

March 28, 1966

Honorable Joe R. Ellis
Prosecuting Attorney
Barry County Courthouse
Cassville, Missouri



Dear Mr. Ellis:

This is in response to your request for an opinion in
reference to the provisions of Section 112.060, RSMo 1959,
as follows:

"My specific question is as follows:
When the County Clerk of Barry County ap-
points persons to open, count and canvass
absentee ballots from a list of names con-
taining double the number of persons re-
quired for appointment which is submitted
the clerk by the Central Committees of the
dominant political parties in accordance
with Section 112.060, Missouri Revised
Statutes, 1959, and the person or persons
so appointed refuse to serve, what is the
duty of the County Clerk? Specifically,
must he appoint from the persons remaining
on the list submitted? May he designate
others outside the submitted list of the
proper political faith to open, count and
canvass the absentee ballots? Also, what
is the duty of the Clerk should all those
persons on the list submitted refuse to
open, count, and canvass the ballots."

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Section 112.060, states in part as follows:

"1. The official charged with the duty of issuing such ballots to absent voters for the district, ward or precinct in which the absent voter resides shall receive the ballot of the absent voter and safely keep and preserve the same unopened in his office. At least twenty-four hours before the ballot is opened and canvassed, the official shall make a complete list of the names of the absent voters whose ballots have been received and shall cause the list thereof to be posted in some conspicuous place in his office, which list shall also show the precinct in which the absent voter claims to be a resident. The list shall be open to public inspection.

"2. Whenever the county clerk and his assistants, or the board of election commissioners, as the case may be shall meet to canvass the votes according to law, the county clerk, or the board of election commissioners, shall first appoint not less than four disinterested persons, from the two dominant political parties, not more than one-half of whom shall be of the same political faith, from a list, furnished the county clerk, or the board, by the central committee of each of the two dominant political parties, double the number required for appointment, not later than six o'clock p.m., of the day next succeeding the day of the election. If any political party, through its committee, fails to present a list of names as aforesaid, within the time aforesaid, then the county clerk, or the board, may select and appoint the requisite number provided by law for the party, for the purpose of opening and counting the absentee vote. In determining the total number of persons to be appointed to open, canvass, count and certify the votes, the county clerk, or board of election commissioners, as the case may be, may appoint four additional disinterested persons in the manner above provided for each additional three hundred ballots, or major portion thereof, delivered to the issuing official or officials after the first three hundred ballots so delivered.

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The person so appointed shall take the oath prescribed for the regular judges of election." (Emphasis added.)

Prior to the Laws of 1945 (Section 11475, RSMo 1939), appointments were made by the county court or the board of election commissioners solely from disinterested persons from two dominant political parties and there was no requirement that the county court or the board of election commissioners select from a list furnished the county court or the board by the central committee of each of the two dominant political parties as required in paragraph two of this section.

Although we are unable to find any applicable judicial interpretations, we believe that the language used can be resolved logically.

Despite the fact that paragraph two does require the political party through its central committee to present a list of names "as aforesaid" it would not be reasonable to conclude that such a list was not presented properly or that the list was invalid for the reason that some of the parties named therein could not or would not serve. It is presumed that the committees acted in good faith and certified to the best of their ability the names of those persons whom they believed to be willing to serve. In the event that some of the parties named are unwilling or unable to serve, we think that the county clerk or the board may select persons to make up the additional double number required, provided by law for the party, and make appointments therefrom.

The statute indicates that it was the intent of the legislature that the county clerk or the board select and appoint from the lists provided by the central committees. Considering that the central committees could not have complete control over individuals or Acts of God that may affect or interfere with the named persons services, it would not seem that a resultant insufficiency would authorize the clerk or the board to treat the entire list as though it had not been submitted.

On the other hand, it is not reasonable to conclude that the clerk may not supplement the deficiency. Whether the fact that the law requires that a list in double the number required be submitted is indicative that it was intended that the clerk or the board has a choice of selection or whether it was based upon the reasoning that there should merely be sufficient supplemental names to anticipate an ultimate shortage of persons available, the fact still remains that the clerk or the board is given some statutory discretion in making the appointments.

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Primarily the law requires the appointment of persons from two dominant political parties by a selection from a list of double the number required for appointment. If the clerk or the board were forced to appoint from lists furnished of less than double the number willing to serve they would be deprived of their discretion and such would thwart the intent of the legislature. It would therefore be the duty of the county clerk or the board to select additional names for the party if such was necessary in order to arrive at double the number required and to thereafter appoint from this list the number required to serve. Necessarily the persons selected must meet the requirements of the section.

Although at least double the number of names required must be submitted by the central committee, we feel that this quantity is intended to be a statutory minimum and that the central committee may submit a list of names exceeding "double the number," and thereby eliminate any possibility of having an insufficiency of persons willing or able to serve.

Obviously, if all the persons on the list submitted refused to serve, the county clerk or the board may make direct selections as alternately provided by law.

CONCLUSION

It is therefore the opinion of this office that:

With respect to the provisions of Section 112.060, RSMo 1959, in the event that the central committees of the dominant political parties submit lists of persons who are unable or unwilling to serve and are therefore less than double the number required by law the county clerk or the board of election commissioners may select persons of the proper political faith from outside the lists to make up double the number required and may appoint therefrom. In the event that all of the persons on the lists submitted by the central committees refuse to serve, the county clerk or the board may act as though the committee had failed to present a list of names as required and may, themselves, select and appoint the requisite number as required and provided by law for the party for the purpose of opening and counting the absentee vote.

The foregoing opinion, which I hereby approve was prepared by my assistant, John C. Klaffenbach.

Yours very truly,


NORMAN H. ANDERSON
Attorney General