

ELECTIONS:
CORRUPT PRACTICES:
UNIONS:
LABOR UNIONS:
POLITICAL COMMITTEES:
COMMITTEES:

Two or more persons whether members of labor union or not, collecting and disbursing money to be used in furtherance of election to public office of any person, constitute a political committee and treasurer must file report of expenditures in period during ninety days preceding election including primaries. Statute of limitations under Section 129.260 (3) requiring treasurer to file a statement within five days after request by five freeholders is one year.

May 24, 1967

OPINION NO. 172

Honorable Thomas W. Shannon
Prosecuting Attorney
City of St. Louis
Municipal Courts Building
14th and Market Streets
St. Louis, Missouri 63103



Dear Mr. Shannon:

This is in answer to your letter of recent date requesting an official opinion of this office. Your first question reads:

"(1) Assuming a labor union receives voluntary contributions from its members, and then makes political contributions to individual candidates, does that union comprise a committee as defined in Section 129.200 RSMo. 1959?"

Section 129.200, RSMo, 1959, provides as follows:

"Every two or more persons who shall be elected, appointed, chosen or associated for the purpose, wholly or in part, or raising, collecting or disbursing money, or of controlling or directing the raising, collection or disbursement of money for election purposes, and every two or more persons who shall cooperate in the raising, collection or disbursement, or in controlling or directing the raising, collection or disbursement, of money used or to be used in furtherance of the election or to defeat the election to public office of any person or any class or number of persons, or in furtherance of the enactment or to defeat the enactment of any law or ordinance, or constitutional provision, shall be deemed a political committee within the meaning of sections 129.010 to 129.260."

It is obvious from the clear and unequivocal language of Section 129.200, RSMo, 1959, that when two or more persons receive contributions from individuals including members of a labor union

and such two or more individuals make political contributions to candidates for political office that such two or more individuals constitute a political committee within the meaning of Section 129.200 RSMo, 1959.

However, it is equally clear that your first question fails to include factual information upon which to base an answer to the question posed.

A labor union that receives contributions from its members and then makes "political" (as that term is used in Section 129.200 RSMo, 1959,) contributions would comprise a committee as defined in Section 129.200, if there were two or more persons appointed, chosen or associated for the purpose of raising, collecting or dispersing money to be used for political purposes by the union.

It is incumbent upon your office to make a factual determination as to whether or not "labor union" that you refer to in your letter acts through two or more individuals in the raising, collecting or dispersing of said funds for purposes political as defined in Section 129.200.

If your office, after making the factual determination, decides:

(1) That contributions are made and that money is raised, collected, or dispersed;

(2) That the money raised and collected is dispersed for political purposes as set out in Section 129.200 RSMo, 1959, and

(3) That two or more persons are elected, appointed, chosen or associated for the purpose, wholly or in part, of raising, collecting or dispersing money for political purposes, the labor organization, or the committee arising out of the labor organization, that you refer to in your first question would, in the opinion of this office, be deemed a political committee, and the treasurer of that committee would be required to file a report as required by Sections 129.230 and 129.260 RSMo, 1959.

Your second question is as follows:

"(2) Assuming that a request for filing statements is made by five or more resident freeholders as authorized by Section 129.260(3), must this request be filed within one year next after the time limit required by the Statute. In other words, does the normal statute of limitations for misdemeanor (1 year) act as a bar to requests for filing made pursuant to this

statute, or can the 'political committee' be held criminally liable for failing to file in elections prior to one year and thirty days before the request was made?"

Section 129.250 RSMo, 1959, provides as follows:

"Every treasurer of a political committee, as defined in sections 129.010 to 129.260, who shall willfully fail, neglect or refuse to make out, verify and file with the recorder of deeds the statement required by section 129.230 shall be guilty of a misdemeanor, and upon a conviction shall be fined not less than fifty nor more than five hundred dollars."

Section 129.260 (3) RSMo, 1959, provides as follows:

"Every treasurer of a political committee, and every person who shall receive any money to be applied to any of the purposes mentioned in section 129.200, who shall either:

* * * * *

"(3) Fail to file the statement and account contemplated by section 129.230 within five days after he shall receive notice, in writing, signed by five resident freeholders of the county in which such treasurer or political committee or person resides, requesting him to file statement and account, shall be guilty of a misdemeanor, and, on conviction, shall be imprisoned in the county jail for not less than two nor more than six months."

Section 129.230 RSMo, 1959, provides that every treasurer of a political committee shall within thirty days after each and every election in connection with which he shall have received or disbursed any money for any of the objects or purposes mentioned in Section 129.200, prepare and file in the office of recorder of deeds a full true and detailed account and statement of monies received or disbursed by him within the period beginning ninety days before such election and ending on the date on which such statement is filed.

It is to be noted that Section 129.250 is specifically applicable to the treasurer of a political committee and makes it a misdemeanor for such treasurer to fail, neglect or refuse to file

with the recorder the statement required by Section 129.230 and provides that the person guilty of such misconduct shall be fined not less than fifty dollars and not more than five hundred dollars.

Section 129.260 (3) is also applicable to a treasurer who fails to file the statement and account provided for in Section 129.230, which account must be filed within thirty days after the election under the provisions of Section 129.230. Section 129.260 (3) is applicable only if the treasurer fails to file the statement required by Section 129.230 within five days after receiving notice in writing signed by five resident freeholders of the county requesting him to file such statement and account.

Such Section provides a much more severe punishment than Section 129.250 since the punishment provided under Section 129.260 (3) is that the treasurer upon conviction be imprisoned in the county jail for not less than two and not more than six months.

It can be seen that the unlawful conduct made criminal by Sections 129.250 and 129.260 (3) is exactly the same, that is, that each makes unlawful the failure of the treasurer to comply with the provisions of Section 129.230, the only difference being that a greater punishment is prescribed under Section 129.260 (3) if the treasurer can be shown to have failed to make the statement required under Section 129.230, within five days after being requested to do so in writing by five freeholders of the county.

Under the provisions of Section 541.210 RSMo, 1959, no person can be prosecuted for a misdemeanor unless the indictment be found or prosecution instituted within one year after the commission of the offense.

It is obvious that the statute of limitations under Section 129.250, the violation of which is a misdemeanor starts to run thirty days after an election for which a political committee treasurer is required to file a statement under Section 129.230.

It is our view that the statute of limitations under Section 129.260 (3) would also start to run thirty days after an election for which a political committee treasurer is required to file a statement under Section 129.230. Since the elements of the misdemeanor denounced by Section 129.250 and 129.260 (3) are exactly the same, it is obvious that the Statute of Limitations is one year after the commission of the offense which offense occurs when the treasurer fails to file the statement within the thirty day period found in Section 129.230.

As stated above, the only difference between Section 129.250 and 129.260 (3) is that a greater punishment is provided under Section 129.260 (3) for exactly the same unlawful conduct if the treasurer refuses to make such statement within five days after being requested to do so by the five resident freeholders.

Under the provisions of Section 19 of Article I of the Missouri Constitution, no person can be convicted twice for the same offense.

We believe it to be obvious that the crimes contemplated by Section 129.250 and Section 129.260 (3) are the same. It is apparent on the face of such Sections that a conviction under Section 129.250 of the treasurer for failing to file the statement within the thirty day period required by Section 129.230 would be a complete defense to any conviction or punishment under Section 129.260 (3) because the elements of the crimes under both Sections are exactly the same and the same facts would have to be proved under each section, the only difference being that a greater punishment is authorized under Section 129.260 (3) if the proof shows that the treasurer failed to file a statement within five days after being requested to do so in writing by five resident freeholders of the county.

Obviously, if the crimes are the same, the running of one year following the period of thirty days after an election would under Section 129.250, completely bar prosecution for failure to file the statement required by Section 129.230. Such running of the Statute of Limitations in criminal cases operates as an absolute bar to a prosecution, *State vs. Civella* 364 SW2d 624. Since the crimes denounced by Section 129.250 and 129.260 (3) are exactly the same and only an increased punishment is provided under Section 129.260 (3), we believe it to be clear that the Statute of Limitations must be held to be the same under both Sections since violations of both constitute misdemeanors and therefore, the Statute of Limitations applicable to violations of Section 129.260 (3), is one year and begins to run thirty days after an election at which statements by political committee treasurers are required under Section 129.230.

We would reach an absurd result if it were held that the Statute of Limitations under Section 129.260 (3) begins to run only after five resident freeholders have made a demand in writing. If such were held to be the case, five resident freeholders could make such a demand fifty years after an election and the Statute of Limitations would then start running making a total period in which prosecution could be begun of fifty-one years. The absurdity of this holding can be seen in view of the fact that no person can be tried for any felony other than a capital offense more than three years after the commission of such felony unless an indictment be found or an information be filed except for bribery or corruption in office in which the limitation is five years. It is apparent that it could not have been the legislative intent that an unlimited period for prosecution of a misdemeanor, the maximum punishment for violation of which is six months in jail be authorized in view of the fact that the Statute of Limitations for felonies for violation of which the punishment may be as much as fifty years in the penitentiary is only five years.

We believe this to be particularly true in view of the favor with which Statutes of Limitations are regarded by the courts. In the case of Ponica vs. Purdome 254 SW2d 673, the Kansas City Court of Appeals succinctly stated this doctrine, l.c. 676:

" * * * * Statutes of limitation instead of being frowned upon by the courts are viewed with favor."

While the opinion in this case was quashed by the Supreme Court the correctness of the statement that Statutes of Limitations are looked upon with favor by the courts, was not challenged.

In the case of State ex rel. v. Carter, 319 SW2d 596, the Supreme Court of Missouri held that the Corrupt Practices Act of which this Section is a part is penal in nature and must be strictly construed. The court said, l.c. 598:

"The Corrupt Practices Act, of which §§ 129.110 to 129.130 are a part, is penal in nature and should be strictly construed. State ex inf. Burgess ex rel. Hankins v. Hodge, 320 Mo. 877, 8 S.W.2d 881, 884; State ex rel. Crow v. Bland, 144 Mo. 534, 46 S.W. 440, 41 L.R.A. 297. When we say a statute should be strictly construed we generally mean that it can be given no broader application than is warranted by its plain and unambiguous terms. City of Charleston ex rel. Brady v. McCutcheon, 360 Mo. 157, 227 S.W.2d 736, 738[2]; * * *"

Since such statute must be strictly construed, it is our view that the request by the five freeholders must be made within a reasonable time since the statute is silent as to the time within which the request must be made.

The purpose of Section 129.260(3), is obviously to make a more severe penalty applicable when a political committee treasurer has not complied with the law requiring that he file within thirty days after the election concerned, a statement of money received and disbursed. It is known immediately after the expiration of thirty days after such election whether the treasurer has filed the required statement and such section at that time gives a right to five freeholders of the county to make a more severe penalty applicable if the treasurer refuses to file the required accounting within five days after being so requested. In view of this, we believe it to be clear that the statute contemplates that such request by the freeholders must be brought within a reasonable time.

In the case of *Monterrosso v. St. Louis Globe-Democrat Publishing Co.*, 368 SW2d 481, the Supreme Court of Missouri had before it a construction of Section 290.110, RSMo, 1959, which Section provides that when a person is discharged by his employer the wages due him shall be payable on the discharge date and that if not paid within seven days after a written request therefor, by the employer, the wages shall continue from the date of discharge until paid; provided that wages shall not continue for more than sixty days unless an action is begun within such period. The Court held that the employee's request for payment must be made within a reasonable time, even though the statute is silent as to the time within which the written request must be made. The Court said, l.c. 489:

"Finally, plaintiffs' requests for payment under § 290.110 were not timely. While the time within which request for unpaid wages shall be made is not stated it is clear by necessary implication that the request must be made within a short time after discharge. One of the objects of the statute is to effect a quick payment to the wage earner of wages due and unpaid at time of discharge. By the proviso it is contemplated that unless actions for the prescribed penalty be commenced within sixty days from date of discharge or refusal to further employ, the penalty of continuing wages will not continue more than sixty days. While request for unpaid wages need not be made immediately after discharge, it must be made within a reasonable time. Every request in the instant case was made at least ninety days after date of discharge, and in some cases as much as one hundred eighty days thereafter. Having in mind the objects and purposes of the statute, and the sixty-day limitation on actions, we rule that ninety days is an unreasonable length of time within which to make request for unpaid wages under § 390.110 and therefore plaintiffs' requests came too late."

In view of the fact that the failure of the political committee treasurer to file the statement is made a misdemeanor and the Statute of Limitations for misdemeanors is one year, it is our holding that a period greater than one year after such statement should have been filed is an unreasonable time for the freeholders to give the notice provided for in Section 129.260(3).

The third question is as follows:

"(3) Is a primary election an election within the meaning of 129.260 (3)?"

The ascertainment of legislative intent in enacting a statute is the object of all rules of statutory construction. The Supreme Court in the case of State ex rel. v. Carter, supra, stated l.c. 599:

"The basic rule of statutory construction is first to seek the intention of the law-makers and, if possible, to effectuate that intention. Laclede Gas Company v. City of St. Louis, 363 Mo. 842, 253 S.W.2d 832, 835 [2]. The court should ascertain the legislative intent from the words used if possible and should ascribe to the language used its plain and rational meaning. A.P. Green Fire Brick Co. v. Missouri State Tax Commission, Mo., 277 S.W.2d 544, 545 [3]; Tiger v. State Tax Commission, Mo., 277 S.W.2d 561, 564 [2]. * * *"

It is our view that the legislative intent in the enactment of Sections 129.200 and 129.230, was to provide for publicity for all contributions to and expenditures by candidates for office so that the people generally would have full information as to the source of financial support of the various candidates for office and the recipients of expenditures of all candidates for office. We believe that it is obvious that such information concerning receipts and expenditures by candidates at primary elections is as necessary as is such information concerning receipts and expenditures by candidates at any other election.

We are aware of the fact that in some cases our courts have held primary elections not to be "elections" insofar as, particular statutory provisions are concerned. In the case of Dooley v. Jackson, 104 Mo. App. 21, the St. Louis Court of Appeals held that a statute relating to betting on elections did not apply to primary elections. Such holding was based on the fact that such statute provided that it was applicable to elections authorized by the Constitution and laws of the state, and the court held that a primary election was not authorized by the Constitution of the state because there was no constitutional direction regarding primary elections.

In the case of State ex rel. v. Graham, 246 Mo. 259, the Supreme Court held that a state primary election was not an election within the meaning of a law prohibiting the holding of a local option election within sixty days of a state election. The court held that the language in such statute showed a legislative intent to refer only to the state biennial elections held in November of even-numbered years, because of the use of the term "general election" in the first section of such law.

However, in the case of Dysart vs. St. Louis, 11 SW2d 1045, the Supreme Court held that a primary election is a general election. The Court said, l.c. 1052:

" * * * Therefore it avails nothing to distinguish a primary election from the statutory definition of any other general election."

Therefore, it is our view that while Section 129.230, must be strictly construed, it is apparent that the legislative intent requiring an accounting of contributions and expenditures by political committee treasurers is applicable to contributions and expenditures during the ninety days preceding a primary election as well as the ninety days preceding other elections.

CONCLUSION

It is the opinion of this office that:

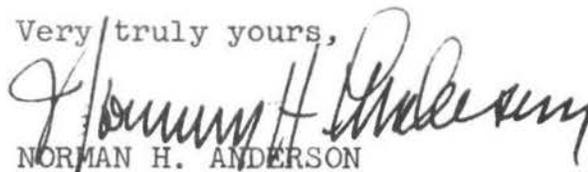
1. When two or more individuals, whether members of labor unions or not, receive voluntary contributions and use such contributions in aid of candidates for public office, such individuals comprise a political committee as defined in Section 129.200 RSMo, 1959, the facts must be examined in each case in which it is alleged a political committee exists to determine whether, as a matter of fact, two or more persons are receiving contributions and using such funds in aid of candidates for public office.

2. The Statute of Limitations, applicable to Section 129.260 (3), RSMo, 1959, is one year, and a request by five freeholders of the county asking that a political committee treasurer file an accounting as required by Section 129.230 RSMo, 1959, has no validity if filed more than one year after the date upon which the statement is required to be filed by the treasurer under Section 129.230, and failure of the treasurer to comply with such demand is not a crime.

3. A primary election is an election within the meaning of Section 129.260 (3) requiring the filing of an accounting of receipts and expenditures by the treasurer of a political committee.

The foregoing opinion of which I hereby approve was prepared by my assistant, Mr. C. B. Burns, Jr.

Very truly yours,



NORMAN H. ANDERSON
Attorney General