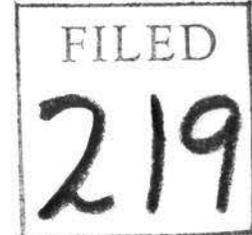


SCHOOLS: The names of candidates in an election "in any six-  
ELECTIONS: director school district located wholly within a city  
having a population of more than two hundred thousand  
and less than seven hundred thousand" shall be listed  
on voting machines in the order that is prescribed by  
the appropriate board of election commissioners and that said board  
may use its discretion in determining what that order shall be.

OPINION NO. 219

March 15, 1968



Honorable Donald L. Manford  
State Representative--18th District  
9409 Oakland  
Kansas City, Missouri 64138

Dear Representative Manford:

This is in answer to your letter of March 6, 1968, in which  
you said:

"I am writing to request an opinion concerning the placement of names of candidates in six director school district elections. A question has arisen as to whether the names of candidates can be placed on the ballot in the voting machine in alphabetical order or whether said names must be placed in the order of the filing time. It would appear that some consideration would be given under Sec. 162.351 and Sec. 121.100."

Subsequently, in a telephone conversation you stated that the district in question is located in Jackson County wholly within the City of Kansas City, Missouri. You also stated that the voting machines to be used were those of Kansas City.

Section 162.351, RSMo Cum. Supp. 1967, states:

"In any urban school district in a city having a population of more than three hundred thousand or in any six-director school district located wholly within a city having a population of more than two hundred thousand and less than seven hundred thousand, or in any six-director school district in a county having a population of more than seven hundred thousand the boards of election commissioners of the city or county or both in which the

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district is located shall conduct any or  
all school elections held in the district.  
\* \* \* " (Emphasis added)

The foregoing section applies to our case since we have a six-director school election in a district which is located wholly within a city which has a population figure between two hundred thousand and seven hundred thousand. (In the 1960 census, Kansas City had a population of 475,539.) The responsibility for conducting the election, therefore, would seem to be in the hands of the Kansas City Board of Election Commissioners.

Since voting machines will be used in this election, we will look at the provisions of Chapter 121 which govern voting machines. Section 121.260, RSMo 1959, speaks of the manner in which the voting machine law shall be applied:

"1. The provisions of all state laws relating to elections and of any city charter or ordinance not inconsistent with this chapter shall apply to all elections in districts or precincts where voting machines are used.

2. Any provision of law, or of any city charter, or ordinance, which conflicts with the use of voting machines set forth in this chapter, shall not apply to the districts, wards, or precincts in which voting machines are used. All acts, or parts of acts, or city charters, or ordinances, in conflict with any of the provisions of this chapter, are of no force or effect in election districts, wards or precincts where voting machines are used."

From the foregoing section, it is clear that where the voting machine law is applicable to a situation, it is dispositive and controlling. Section 121.100, RSMo Cum. Supp. 1967, states:

"1. In every county or city adopting the use of voting machines, the election authority shall furnish to the judges of election of the precincts in which the machines are to be used a sufficient number of ballot labels printed in uniform size in black ink and on clear white material, of such form and size as will

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fit the ballot frames of the machines.  
The arrangement of the names of the candidates on the ballot labels shall be prescribed by the officials. \* \* \*

\* \* \* \* \*

4. The order of the arrangement of parties and candidates shall be as provided by law, not in conflict herewith, except that the candidates for nomination for any one office at any primary election shall be listed in the order of filing, either vertically or horizontally. \* \* \* " (Emphasis added)

A former opinion of this office, Attorney General's Opinion No. 21, Dalton, 12/20/61, interpreted the portions of Section 121.100 set out above. It was held that subsection 1 applied to general elections and that in those elections the election officials are given broad and unlimited discretion in arranging the names of candidates on the ballot labels. This was further interpreted to mean that the names did not have to be printed in the order certified by the Secretary of State as required by Section 111.420, RSMo 1959. However, the former opinion held that under subsection 4, as set out above, the names of candidates in primary elections had to be listed in the order of filing.

It should be noted that Section 121.100, paragraphs 1 and 4, were amended in 1965. However, it is our belief that the amendment did not change that part of the statute relating to our present question which was interpreted in the above mentioned opinion.

Again we refer to Section 162.351 which states:

" \* \* \* When any school election is held it shall be conducted in all respects in accordance with the laws relating to election of state, county or city officers, including the laws governing the eligibility and registration of voters, and to the applicable law relating to the submission of bond issues within the jurisdiction of the board of election commissioners which conducts the election. \* \* \*"  
(Emphasis added)

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We feel that this part of Section 162.351 contemplates that the school director elections be held in accordance with the law governing general elections. If this is true, then paragraph 1 of Section 121.100 would apply and the order of the listing of the candidates' names would be left to the discretion of the appropriate election officials, which in this case would be the Board of Election Commissioners.

CONCLUSION

It is the opinion of this office that the names of candidates in an election "in any six-director school district located wholly within a city having a population of more than two hundred thousand and less than seven hundred thousand" shall be listed on voting machines in the order that is prescribed by the appropriate board of election commissioners and that said board may use its discretion in determining what that order shall be.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Gary G. Sprick.

Very truly yours,

  
NORMAN H. ANDERSON  
Attorney General

CGS/jlf