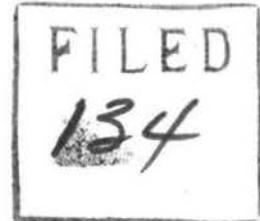


ELECTIONS:
CANDIDATES:
SHERIFFS:
COUNTY CLERK:

A person is not eligible for the office of sheriff unless he has resided in the county for more than one whole year next before filing for said office whether he files by declaration of candidacy or by nominating petition. The time for such filing is on or before five p.m. on the last Tuesday of April preceding the primary. The clerk of the county court may refuse the filing of such a person who does not possess the requisite residency eligibility.

OPINION NO. 134

May 17, 1972



Honorable Bernard W. Gorman
Prosecuting Attorney
Atchison County
102 South 3rd Street
Tarkio, Missouri 64491

Dear Mr. Gorman:

This opinion is in answer to your opinion request in which you ask:

- "a) May a person desiring to become a candidate for sheriff, and not having resided in the county a year immediately prior to the last day for filing a declaration of candidacy, file nominating petitions as an independent instead of filing a declaration of candidacy?
- "b) Must he file the nominating petitions on or before the last day for filing a declaration of candidacy, or must he file the nominating petitions within the limits established by Section 120.220? There seems to be a contradiction between the provisions of 120.220 and 120.240.
- "c) Is the one year residency before filing a disqualifying provision so that having failed that requirement he is ineligible for the office should he be elected. The ultimate question being, is this person

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ineligible because of his failure to meet the residency requirement and therefore may not be a candidate even though he files the nominating petitions at the proper time?"

You also state that:

"A person established residence in Atchison County, Missouri on August 1, 1971, and has continued to live in the county since that date. He desires to become a candidate for sheriff of this county. He has circulated petitions, apparently in the proper form, signed by the requisite number of voters. His petitions state that he is a candidate on the independent ticket. His eligibility other than the residency requirement is unquestioned. Section 57.010 provides that a candidate for sheriff 'shall have resided in said county for more than one whole year next before filing for said office. . . .'

"The County Clerk is doubtful that he should accept the nominating petitions at any time because of the question of eligibility of the candidate, or having accepted them place the candidate's name on a ballot."

Section 57.010, RSMo 1969, with respect to the eligibility requirements for the office of sheriff, states in part:

". . . Such person shall be a resident taxpayer and elector of said county, shall have resided in said county for more than one whole year next before filing for said office and shall be a person capable of efficient law enforcement. . . ."

The provision with respect to the filing of such candidate for a countywide office is contained in Section 120.240, RSMo 1969, which states in part:

"1. No person's name shall appear on a general election ballot as an independent candidate whose petition for such status shall not have been submitted to the proper officer by whatever time may be fixed by law as the final date for filing as a candidate in a party primary."

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Section 120.240, above quoted, must be distinguished from Section 120.220 which states:

"Petitions of nomination for the nomination of candidates for offices in cities and other political subdivisions shall be filed with the clerk or other proper officer or board of the political subdivision at least sixty-eight days prior to the day of election. No such petitions of nomination shall in any event be filed more than eighty-five days before the day of the election."

By comparison Section 120.220, RSMo 1959 stated:

"Petitions of nomination under sections 120.140 to 120.230 for the nomination of candidates for offices to be voted upon by the electors of the entire state, or any district larger than a county, shall be presented to the secretary of state at least seventy-eight days previous to the day of election for which the candidates are nominated. All other petitions for nomination of candidates shall be filed with the county clerk of the respective counties at least seventy-eight days previous to the day of election; except that petitions of nomination for nomination of candidates for the offices in cities and other political subdivisions shall be filed with the clerk or other proper officer or board of the political subdivision at least sixty-eight days previous to the day of election. No such petitions of nomination shall in any event be filed more than eighty-five days before the day of election. (Emphasis added)

The underscored portions indicate clearly that county offices were considered separate from those of "cities and other political subdivisions." The reference to filing petitions with the county clerk for county offices was deleted when the section was amended and only the provisions applicable to "cities and other political subdivisions" were reenacted. Laws 1969, page 237. Therefore, we believe that the provisions of Section 120.220, RSMo 1969 are not applicable to petitions for county offices. Our conclusion is that Section 120.240 refers to candidates for county offices and therefore the petitions must be filed by the "time . . . fixed by law as the final date for filing as a candidate in a party primary."

Section 120.340, RSMo 1969, states in part that:

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"No candidate's name shall be printed upon any official ballot at any primary election unless the candidate has on or before five p.m. prevailing local time on the last Tuesday of April preceding the primary filed a written declaration of candidacy, . . ."

Therefore, if the candidate for the office of sheriff has not resided in such county for more than one whole year next preceding the last Tuesday in April preceding the primary he is, under Section 57.010, not eligible for the office of sheriff.

With respect to the question of whether or not the clerk can refuse the filing of such a candidate, it is our view that our Opinion No. 87, dated April 11, 1972 to Usrey, enclosed, answers your question and that the clerk may refuse to place the name of a candidate he believes to be ineligible on the ballot.

CONCLUSION

It is the opinion of this office that a person is not eligible for the office of sheriff unless he has resided in the county for more than one whole year next before filing for said office whether he files by a declaration of candidacy or by nominating petition. The time for such filing is on or before five p.m. on the last Tuesday of April preceding the primary. The clerk of the county court may refuse the filing of such a person who does not possess the requisite residency eligibility.

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

Very truly yours,



JOHN C. DANFORTH
Attorney General

Enclosure: Op. No. 87
4/11/72, Usrey