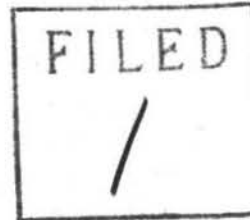


CONSTITUTIONAL CONVENTION:
NOMINATION OF DELEGATES:

Members of Senatorial Committee convened to nominate delegates for election as members of Constitutional Convention, may not count votes by proxy of any such member absent from such convention.

February 26, 1943



2-27

Mr. George Adams
Prosecuting Attorney
Audrain County
Mexico, Missouri

Dear Sir:

This is in reply to yours of recent date, wherein you request an opinion from this department on the question of whether or not a member of a Senatorial Committee may vote by proxy at a convention of such Senatorial Committee convened for the purpose of nominating delegates for election as members of the Constitutional Convention.

The Senatorial Committee is made up of the Chairman and Vice-Chairman of the Central Committees of the various counties composing the Senatorial District. Such parties are members of this Senatorial Committee by virtue of the fact that they have been elected as members of the Central Committee in their respective counties.

In the case of State ex rel. Ponath v. Hamilton, 240 S. W. 445, the court held that members of the Central Committee are county officers. The members of the Senatorial Committee exercise a discretion in matters pertaining to elections or nominations. Under Section 3 of Article XV of the Constitution, which pertains to the Constitutional Convention, we find the following which relates to the duties of the Committee in regard to making nominations for delegates to the Constitutional Convention:

"* * * In order to secure representation from different political parties in each senatorial district, each political party as then authorized by law to make nominations for the office of state senator in each senatorial district shall nominate only one candidate for delegate from such senatorial district, and such candidate shall be nominated in such manner as may

be prescribed by the senatorial committee of the respective parties, and a certificate of nomination shall be filed in the office of the secretary of state at least thirty days before such election, * * * * *

Your inquiry resolves itself into a question of whether or not the members of the Committee may delegate their powers by proxy to nominate these delegates.

In Vol. 46 C. J., page 1032, at Sec. 291, we find the rule announced as follows:

"A officer to whom a discretion is entrusted, cannot delegate the exercise thereof, * * *"

We also find that this rule has been applied and followed in Missouri. State ex rel. Skrainka Const. Co. v. Reber, 226 Mo. 229, l. c. 237, states the following:

"* * * An officer to whom a discretion is entrusted by law cannot delegate to another the exercise of that discretion, * * * * *"

Also, in Powers v. Kansas City, 224 Mo. App. 70, l. c. 79, the court, in speaking of the authority of an officer to delegate his duties, made this statement:

"He cannot delegate those duties which call for the exercise of his discretion, * * * * *"

In Vol. 12, Words and Phrases, Permanent Ed., page 594, the word "discretion" is defined as follows:

"'Discretion' may be defined, when applied to public functionaries, as the power or right conferred upon them by law of acting officially under certain circumstances, according to the dictates of their own judgment and conscience, and not controlled by the judgment or conscience of others. * * * * *"

Under this definition we think there can be no question but that when the members of the Committee are voting for the nomination of some person that they are exercising a discretionary power, and therefore, do not have any authority to delegate this power to some other person.

CONCLUSION

From the foregoing, it is the opinion of this department that a member of the Senatorial Committee may not vote by proxy at a convention of the Senatorial Committee convened for the purpose of nominating a delegate for election to membership in the Constitutional Convention.

Respectfully submitted,

TYRE W. BURTON
Assistant Attorney-General

APPROVED:

ROY MCKITTRICK
Attorney-General

TWB:CP