

ELECTIONS: Election challengers or watchers may not be appointed for an election conducted by a six-director school district except in St. Louis County. Where a school election is held jointly with an election for which challengers or watchers may properly be appointed, however, those challengers or watchers may challenge voters in the school election as well as the other election.

OPINION NO. 9

April 8, 1974

Honorable James C. Kirkpatrick
Secretary of State
State Capitol Building
Jefferson City, Missouri 65101



Dear Mr. Kirkpatrick:

This official opinion is in response to your request for a ruling on the following questions:

"May challengers or watchers be appointed by political parties, candidates, or others for an election conducted by a six-director school district?

"If so, who is authorized to sign the certificate of appointment for the challengers and watchers, and what rights and responsibilities do the challengers and watchers operate under?

"If the answer is no, may challengers and watchers appointed under other authority for other elections play an official role in the six-director school election when those elections are held in conjunction with other municipal elections held on the same day under the authority of Chapter 111.111?"

Generally speaking, the only people who are authorized to be in a polling place during the hours of an election are election clerks, election judges, and voters casting ballots. However, in addition to these people with their official functions, the legislature may also permit election challengers or watchers to sit in at an election under regulations prescribed by the legislature. 29 C.J.S. Elections § 200. The role and status of challengers and

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watchers was described by the Missouri Supreme Court in the case of Preisler v. Calcaterra, 243 S.W.2d 62 (Mo. Banc 1951) at pages 65 and 66:

"[6] Challengers and watchers are in no sense public officials charged by law with the responsibilities of conducting fair and impartial elections, 'free and open.' They are not even under oath. And they are not subject to the penalties provided by Chapter 118, supra, as are the appointive officials of elections. They may or may not be in attendance at the polls. Their function is partisan, not nonpartisan in character. The Supreme Court of Pennsylvania pointed out these distinctions in stating the difference between 'overseers' and 'watchers' of elections in Pennsylvania, in Re Parrish's Petition, 214 Pa. 63, 63 A. 460, 461. The overseers were, by constitutional authority, appointed by the Court of Common Pleas. The watchers were appointed by each political party under authority of statute. The overseers had the duty and authority to supervise the proceedings of election officers and to make report to the Court as required, in order 'to secure the purity and fairness of elections.' The Court said watchers, unlike overseers, 'are not appointed by the court, they are not amenable to it, and they are not required to report to it. They hold their position solely by virtue of an appointment by a political party, to which good faith and political honesty require them to be true, but to which they are not legally responsible. They are not even officers, such as are known to the law, but simply the agents of the party which appoints them to protect its political interests at the polls, and who the law permits to be present in the voting room for that purpose, without compensation and without any authority or control over the proceedings of the election officers.' (Our italics.)"

The presence of challengers and watchers is subject to statutory regulation and the right to be represented at a polling place by a challenger usually extends only to political parties, not to individual candidates. Preisler v. Calcaterra, supra. Thus, the

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legislature has provided for the presence of election watchers or challengers at elections held in the city of St. Louis (Section 118.510, RSMo), in St. Louis County (Sections 113.200-113.205, RSMo), in Kansas City (Section 117.590, RSMo), in Clay County (Section 119.480, RSMo), in certain municipal elections (Sections 76.040, 78.530, 122.440, and 122.780, RSMo), in Jackson County outside of Kansas City (Section 113.870, RSMo), at certain primary elections (Section 120.480, RSMo), and for certain other elections.

Notably absent from this list, however, is any statutory authorization for challengers at school elections (except in St. Louis County where all school elections are governed by Chapter 113, RSMo). This evident legislative scheme for providing challengers and watchers only at specifically enumerated elections leads us to the inescapable conclusion that challengers and watchers are not authorized at school elections.

In view of this conclusion, it is unnecessary to answer your second question.

Your third question involves elections held jointly by school districts and other election authorities where challengers or watchers are present pursuant to separate provisions of the law. Although you refer to Section 111.111, RSMo, joint elections are also authorized by Section 162.371, RSMo, and our opinion deals with elections held pursuant to either of these sections.

The only power an election challenger has is the power to watch for possible violations of the election laws and bring them to the attention of the polling judges. There is nothing in the statutes which suggests that this power is limited to any particular candidate or issue. On the contrary, if a challenger succeeds in disqualifying a voter from casting a ballot in a city or county or state election, we can conceive of no reason why that challenge should not also extend to the potential voter's right to cast a school ballot.

CONCLUSION

It is, therefore, the opinion of this office that election challengers or watchers may not be appointed for an election conducted by a six-director school district except in St. Louis County. Where a school election is held jointly with an election for which challengers or watchers may properly be appointed, however, those challengers or watchers may challenge voters in the school election as well as the other election.

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The foregoing opinion, which I hereby approve, was prepared by my assistant, Richard E. Vodra.

Yours very truly,

A handwritten signature in dark ink, appearing to read "John C. Danforth". The signature is fluid and cursive, with the first name "John" being more prominent.

JOHN C. DANFORTH
Attorney General