

ELECTIONS: County committeeman holds over until his
POLITICAL PARTIES: successor is elected and qualified.
COMMITTEEMAN:



January 3, 1955

Honorable Harold S. Hutchison
Prosecuting Attorney
Maries County
Vienna, Missouri

Dear Mr. Hutchison:

In your recent request for an opinion of this office,
you ask:

"A man in this county had his name put
on the ticket of the Republican Party
for Committeeman, 1948, then was elected
and qualified. In 1950, 52 and 54 his
name did not appear upon the ballot and
was not written in.

"My question is, did he continue to hold
office until his successor was elected and
qualified and is he at present a township
committeeman?"

It is assumed that no one else received any votes what-
soever for the office which the committeeman to whom you refer
held, and that, therefore, there was no successor elected as
Republican Committeeman in either the years of 1950, 1952,
or 1954.

Section 12 of Article VII, Constitution of 1945, provides:

"Except as provided in this constitution,
and subject to the right of resignation,
all officers shall hold office for the
term thereof, and until their successors
are duly elected or appointed and qualified."

Hon. Harold Hutchison

Likewise, Section 105.010 RSMo 1949 provides:

"All officers elected or appointed by the authority of the laws of this state shall hold their offices until their successors are elected or appointed, commissioned and qualified."

Under similar provisions of the Constitution and laws in effect in 1922, the Supreme Court of Missouri, in the case of State ex rel. Ponath v. Hamilton, 240 S.W. 445, reached the conclusion that at least for purposes of tenure and similar matters party committeemen were officers under the above quoted provisions. The court concluded, l.c. 448:

"We conclude, therefore, not from inference or implication, but from an interpretation based upon the nature and purpose of the statute creating party committeemen and the uniform character of the duties devolving on them as such, regardless of whether they are elected in the city of St. Louis by wards or in a county by townships, that they are, so far as affects their official tenure and the right to maintain and establish same, county officers; and hence within the purview of the section (4896 R.S. 1919) regulating contested elections."

Thus it appears that for the purposes of this question, the party committeeman would hold over where no successor has been elected and qualified, and would be, at present, the holder of the office of Republican Committeeman.

Further, it appears that the general rule is that unless the statutes make a contrary requirement, those elected to an office such as committeeman will hold over and fill the office until their successors are elected and qualified or accept the office. This general rule is expressed in 29 C.J.S., Elections, Section 86, page 117, where it is stated:

"In accordance with the general trend of decisions in this country as regards officers generally, see the C.J.S. title Officers Sec. 48, also 46 C.J. p 968 note 55, in the absence of any general law or rule or usage of the party to the contrary, party officers, such as committeemen, are

Honorable Harold S. Hutchison

entitled to hold their positions until their successors are appointed or chosen and have qualified or until such successors are elected pursuant to statute regulating elections."

Section 120.770 provides for the election of committeemen in the August primary. However, this statute does not make any provision for the length of the term of office and is silent as to whether or not the committeeman will hold over after his normal term of office expires. Section 120.800 provides that the county committee shall be composed of the committeemen and committeewomen elected at the August primary next preceeding. However, this section is also silent as to any possible holding over.

A further search of the statutes reveals that by the provisions of Section 120.780, committeemen and committeewomen for counties of the first class hold office for two years and "until their successors are duly qualified and elected." Likewise, by Section 120.790, it is provided that committeemen and committeewomen for the City of St. Louis hold office for a period of four years and "until their successors are duly elected and qualified." Thus, although it appears that the statutes do not specifically provide that committeemen in your county shall hold over, the Legislature has provided for such holding over in other counties and in the City of St. Louis, and since the statutes contain no prohibition against such holding over in your county, the general rule as set out above would seem to apply and would be consistent with the other enactments of the Legislature, and consequently the committeeman to whom you refer would hold his office until his successor is duly elected and qualified.

CONCLUSION

It is the conclusion of this office from the foregoing that the committeeman to whom you refer in your request holds his office until his successor is elected and qualified, and that he is at present the holder of the office of Republican Committeeman.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Fred L. Howard.

Very truly yours,

John M. Dalton
Attorney General