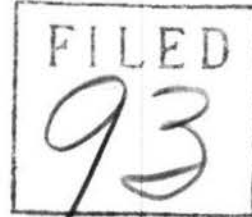


ELECTIONS: TOWNSHIP COMMITTEEMEN AND COMMITTEEWOMEN  
Primary : elected in August Primary hold office  
until following August Primary, although  
township should be divided between both  
primaries.

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February 9, 1940

Hon. Stanley Wallach  
Prosecuting Attorney  
St. Louis County  
Clayton, Missouri



Dear Sir:

We are in receipt of your request for an opinion,  
dated February 1, 1940, which reads as follows:

"Recently the County Court of St. Louis  
County entered an order dividing Caronde-  
let Township of this County into two  
townships, the Lemay Township and the  
Gravois Township.

"We have been requested on behalf of  
the Republican Committeewoman of Caronde-  
let Township, duly elected at the August  
Election, 1938, to secure an opinion on  
the question of whether the division of  
Carondelet Township automatically makes  
her Committeewoman of Lemay Township, in  
which she resides, without re-appointment  
by the Central Committee and issuance of  
a new commission by the Governor.

"Also, a ruling is requested as to  
whether the additional Committeemen and  
Committeewomen to be, for the two new  
townships created, must receive the recom-  
mendation from their Central Committee

and receive their commission from the Governor, or whether this action can be taken solely by the Committee without reference to the Governor.

"In short, an opinion is requested regarding the status of the former Committeeman and Committeewoman of Carondelet Township and the manner of appointing new Committeemen and Committeewomen for the two new townships."

Section 10278 R. S. Missouri, 1929, reads as follows:

"At the August primary each voter may write in the space left on the ballot for that purpose the names of a man and a woman, qualified electors of the precinct, or voting district as the case may be, for committeemen for such township, or voting district, and the man and the woman receiving the highest number of votes in such township, or election district, shall be the members of the party committee of the county, or in the case of a city not within the county, of the city of which such voting precinct, or district is a part: Provided, that any qualified elector in any such voting precinct or district may have his or her name printed on the primary ballot, or party ticket on which he or she may desire to become a candidate for committeeman or committeewoman by complying with the provisions of section 10257, R. S. 1929."

Under the above section the county committeemen, which includes the county committeewomen, are elected and are not nominated. It specifically holds that at the August Primary the committeemen or committeewomen shall be elected. This election of course takes place before the regular election in November.

Township committmen have been held to be public officers. It was so held in *State v. Hamilton*, 240 S. W. 445, 1.c. 447, where the court said:

"Cases illustrative of the effect of a nomination by a primary election are not necessary to the determination of the official status of a party committeeman. He is not nominated but elected at the primary, and his election at that time and in that manner is as effectual as if he had been chosen at a general election. It is therefore from the nature of the duties the law imposes on him that the character of his position is to be determined. We have shown that the law defines the duties and that their performance involves the discharge of certain functions of government. This, without more, is sufficient to authorize the classification of such a committeeman, if not as a public officer in the full sense of the term, as holding a position analogous thereto."

Section 12041 R. S. Missouri, 1929, reads as follows:

"Each county court may divide the county into convenient townships, and as occasion may require erect new town-

ships, sub-divide townships already established, organize better township lines, and may, upon the petition in writing, of not less than twenty-five per centum of the legally qualified voters of each township affected, as such vote was cast in the last preceding general election for the office receiving the greatest number of votes in the township or townships affected, consolidate two or more existing townships, into one township, or otherwise reduce the number of townships, or change the boundary lines thereof, as may be deemed advisable."

This section provides for the division of townships and also provides for the consolidation of townships.

Under Section 10278, supra, the only qualification set out is that the candidate, either a man or a woman, should be a qualified elector of the district or the precinct, as the case may be, to act as committeeman or committeewoman for such township.

In your request you state that the county court has divided a certain named township into two other separate townships under different names. Since Section 10278, supra, provides that the election of the township committeemen or committeewoman should be held in the August primary there can be no other election for committeemen or committeewomen for the two new townships designated by the county court in place of the old township, under which the committeemen and committeewomen were elected in 1938.

Since neither of the committeemen or committeewomen have resigned or are incapacitated by removal or other causes they are still officers of the old township for the reason that the election for committeemen and committeewomen under the new divided townships cannot take place

Hon. Stanley Wallach

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until the August primary in 1940. There has been no vacancy in any of the offices and all of the committeemen and committeewomen elected in 1938 hold office until the new committeemen and committeewomen are elected in the new townships, in 1940.

It cannot be said that a vacancy has arisen by reason of the change of the name of the original township, for the reason that they are not removed out of the township by reason of the changing and division of the original township. This question has not been passed upon by our courts, but in the case of *Stewart v. Riverside*, 68 N. J. Law 571, l. c. 573, the court said:

"Section 8 seems to cover the entire subject, and to exclude the creation of a vacancy by implication from circumstances not covered by that section. In our opinion a removal out of the township, in order to create a vacancy, must be a voluntary removal. A removal by operation of law, resulting from an act of the legislature cutting off a portion of the township, leaving a person out of the township who, when elected, was a resident within its territory, would not be a 'removal out of the township,' within the meaning of section 8 of the act. The words, 'become incapable of serving' refer, as we think, to a personal incapacity, mental or physical, on the part of the incumbent, and not to a supposed incapacity created by a change of the township boundary, leaving the incumbent a non-resident of the township. Non-residence renders one ineligible to the office, but no incapable of serving."

Also, in 63 C. J. page 139, this authority states as follows:

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"\* \* \* In some cases it has been held that a change of boundaries which leaves the residence of the officer outside the township will operate to vacate his office at least prima facie; but under a statute concerning townships which provides that, 'if any person shall resign from his office, or shall die or remove out of the township, or become incapable of serving, 'etc., his office shall be deemed to be vacant, the 'removal out of the township' contemplated is a voluntary removal. And a removal by operation of law resulting from an act of the legislature cutting off a portion of the township, including the place of residence of a township officer, who, when elected, was a resident within its territory, is not a 'removal out of the township' within the meaning of such statute."

CONCLUSION

In view of the above authorities, it is the opinion of this department that the committeemen and committeewomen both Republican and Democratic, who were elected in the August Primary of 1938, as township committeemen and committeewomen of Carondelet Township of St. Louis County hold office until the August Primary of 1940 when new committeemen and committeewomen shall be elected from both Lemay Township and Gravois Township.

Respectfully submitted,

APPROVED:

W. J. BURKE  
Assistant Attorney General

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TYRE W. BURTON  
(Acting) Attorney General

WJB:RW