

CITIES THIRD CLASS \* Persons who are in arrears for unpaid city taxes at the time the polls closed on election day are ineligible to hold office.

March 6, 1936

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Honorable W. P. Wilkerson  
Prosecuting Attorney of  
Scott County  
Benton, Missouri

Dear Mr. Wilkerson:

This is to acknowledge your letter as follows:

"I have been requested by the officers of the City of Sikeston to ask an opinion from your office regarding the meaning of Sec. 6743, R. S. 1929, referring to persons elected to city offices who have not paid their taxes. The city officers want to know whether it is the duty of the Mayor and City Council to refuse to declare persons elected to city offices who received a majority vote, but whose city taxes are not paid."

Sikeston is a city having a population of 5676 inhabitants according to the United States decennial census of 1930, and we assume is a city of the third class by virtue of Section 6092 R. S. Mo. 1929.

Article 4, Chapter 38, R. S. Mo. 1929 relates to "Cities of the Third Class" and Section 6723 Provides for the elective officers of said cities of the Third Class. Said section reads as follows:

"The following officers shall be elected by the qualified voters of the city, and shall hold their offices for two years, and until their successors are duly elected and qualified, to-wit: A mayor, marshal, attorney, police judge, assessor, collector and treasurer. The attorney shall be a person learned in the law."

The officers of a city of the third class must possess certain qualifications and Section 6743 R. S. Mo. 1929 referred to in your letter provides in part as follows:

"No person shall be elected or appointed to any office who shall at the time he be in arrears for any unpaid city taxes, or forfeiture or defalcation in office."

Your question concerns the interpretation to be given to the part above quoted from Section 6743 supra. As we read said proviso in Section 6743, there is no ambiguity or uncertainty as to what the legislature meant. Perhaps with the defining of the words "Elected" and "City taxes" the answer to your problem is comparatively easy.

In State ex inf. v. Broeker, 11 S. W. (2d) 81, the St. Louis Court of Appeals held that license taxes were not included within the term city taxes as used in Section 6743, having the following to say l. c. 83:

"Consequently, without further discussion, we conclude that the only reasonable view to be taken of the matter at hand is that the Legislature, in section 8230, R. S. 1919, (Sec. 6743 R.S. 1929) prescribing the qualifications for office, used the term "city taxes" in the same sense as in sections 8267, 8268, R. S. 1919, that is,

as ordinary property taxes, and did not intend to include license taxes therein, for the imposition and collection of which separate provision was made in the course of the act."

There is no question but that a person would be ineligible to a city office if at the time he was elected, he was in arrears for any unpaid city taxes. State ex inf. v. Page, 140 Mo. 501, State ex rel Thomas v. Williams, 99 Mo. 291.

You will note that the statute uses the words "at the time" and "shall be elected". We are of the conclusion that a person having unpaid city taxes after the polls closed on the date of the election would not be eligible to be declared elected to a city office, and as authority for our conclusion we refer you to State ex inf. v. Berkley, 140 Mo. 184. We quote from said opinion, page 187:

"Among the admitted facts was this statement: 'It is conceded by both plaintiff and defendant that the point to be decided by the court is, whether the defendant is entitled, under Section 25, of article 4, of the laws of Missouri, 1893, to hold, exercise, and enjoy the office of city attorney of the city of DeSoto, Missouri, said city being a city of the third class, he having failed to pay his delinquent city taxes until 9 o'clock A. M. on the day of the election as aforesaid.'

On this point we have no doubt that defendant paid his delinquent city taxes in time to render him eligible to the office of city attorney, because

at the time he paid those taxes, to wit, at 9 a.m. of the tenth day of July aforesaid, the election was then in progress, and was not over until the close of the polls on that day."

See also State ex rel. Eisas v. Missouri Workmen's Compensation Commission, 2 S. W. (2d) 796, and State ex rel. Licktenstein v. Missouri Workmen's Compensation Commission, 2 S. W. (2d) 802.

CONCLUSION.

It is our opinion from the above and foregoing that any person who receives a majority of votes cast for an office at an election held for that purpose in a city of the third class would be ineligible to be declared elected if such person was in arrears for any unpaid city taxes at the time the polls closed on said election day. The subsequent payment of said taxes in arrear would not in our opinion qualify said person. It follows that the Mayor and City Council should refuse to declare persons elected to city offices who received a majority vote, but whose city taxes are not paid.

Yours very truly,

JAMES L. HORNBOSTEL  
Assistant Attorney General

APPROVED:

JOHN W. HOFFMAN, Jr.  
(Acting) Attorney General

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