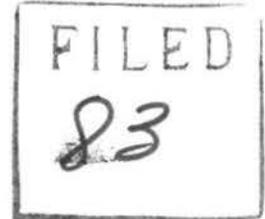


Elections: The office of Collector of cities of the fourth class is an elective office. When an office does not appear on the ballot the electors may write in the name of a qualified person to fill that office.

April 1, 1937



Mr. Ed Smith
City Clerk
Gideon, Missouri

Dear Sir:

We are in receipt of your request for an opinion which reads as follows:

"At the request of our Mayor, I am writing you for information in regards to a little difficulty that has arisen in our coming election. Our understanding is that the office of City Collector is optional, either elective or appointive in a 4th class city.

"It has always been customary in our little City that the Mayor appoint a Collector. Here-to-fore the City Marshal has always been appointed Collector, thereby combining the two offices in that manner.

"That being customary, my Notice of Election does not mention the office of Collector. (Am enclosing one of our original notices.)

"Our Election Ballots are already made to conform with the Election Notice. After all preparations have been made, we have a citizen here who is going to contend for the Office of Collector by having his friends write his name in the Ballots as a candidate for "City Collector," thereby casting their votes for him in that manner. This is the first case of this kind we have had.

"Our question is this: Will the votes cast for him in this manner, lawfully entitle him to that office?

"We will highly appreciate this information if you will be so kind as to furnish us with same. If there are any charges, send statement with answer. We would like to hear from you before time to install newly elected officers."

Your request contains two questions:

1. Is the collector of a city of the fourth class an elective office or is such office filled by the city marshal?
2. If an office is not on the ballot, may the name of a qualified person be written in to fill such office?

I.

Section 6951, Revised Statutes of Missouri 1929, under the Article referring to cities of the fourth class provides, in part, as follows:

"The following officers shall be elected by the qualified voters of the city, and shall hold office for the term of two years and until their successors are elected and qualified, to-wit: Mayor, marshal, collector and board of aldermen, and the board of aldermen may provide by ordinance that the same person may be elected marshal and collector, at the same election, and hold both offices,**
***"

Under the above statute, a marshal and a collector both are to be elected and the mayor has no right to appoint

such officers. The board of aldermen may provide by ordinance that the same person may be elected and hold the office of marshal and collector. However, even if such an ordinance has been passed the electors must still vote on each officer, because, in view of the provision that "the same person may be elected marshal and collector at the same election and hold both offices," it is indicated that the offices are not combined but only that one person may be elected and hold these two particular separate offices.

II

Your second question is whether the electors may write in the name of a person for city collector when said office is not on the ballot.

In State ex rel Dunn v. Coburn, 260 Missouri, 177 l. c. 192, the Supreme Court of Missouri en banc provides:

"****the people would nevertheless have the right to express their choice by writing on the ballot the name of any qualified person whom they desired to designate for any office which the law permitted to be then filled by election. The electors are not restricted to the names or offices printed on the official ballot."

CONCLUSION

It is therefore the opinion of this department that the collector of a city of the fourth class must be elected and that if such office is not on the ballot, the electors may write in the name of a qualified person for such office.

Respectfully submitted,

OLIVER W. NOLEN
Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

AO'K:JMW