

STATE MERIT SYSTEM ACT:

Individual not candidate within meaning of State Merit System Act, Session Acts 1945, page 1157, until filing under Section 11550, R.S. Mo. 1939.

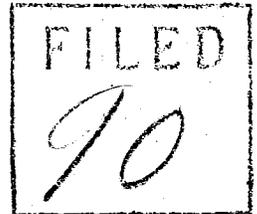
CANDIDACY OF EMPLOYEES FOR PUBLIC OFFICE:

LEAVE OF ABSENCE:

No mandatory direction in Merit System Act requiring superior to grant leave of absence to prospective candidate.

Candidates:

November 21, 1947



Mr. Ralph J. Turner, Director
Personnel Division
State Department of Business and Administration
630 Jefferson Street
Jefferson City, Missouri

Dear Sir:

We have your recent letter in which you request an opinion of this department. Your letter is as follows:

"A question has arisen as to the construction to be given to Section 43(e) of House Bill 162 enacted by the 63rd General Assembly regarding the question of an employee under the Act being a candidate for nomination or election to any public office. Specifically, there are two questions which are as follows:

- "1. When does an individual become a candidate for public office and, under the Act, when would he be required to resign or request a leave of absence.
- "2. Is it mandatory that the appointing authority be required to grant such leave of absence if requested by an individual under this section:

"(e) No employee selected under the provisions of this act shall be a member of any national, state, or local committee of a political party, or an officer of a partisan political club, or shall take any part in the management or affairs of any political party or in any political campaign; except to exercise his right as a citizen to express his opinion and to cast his vote. No employee in a position subject to this act shall be a candidate

for nomination or election to any public office except after resigning, or obtaining a regularly granted leave of absence, from such position.'

"In order to resolve the question we would appreciate receiving from you an opinion as to when an individual becomes a candidate for public office and when would such individual, employed under the Act, be required to resign or request a leave of absence. Also, is it mandatory that the appointing authority be required to grant such leave of absence if requested by an individual under this section.

"A copy of the correspondence relating to this situation is being enclosed for your information."

You also attach certain correspondence pertaining to the particular circumstances which have prompted your inquiry, together with a photostatic copy of a letter evidently intended for use by the prospective candidate in seeking the office to which he aspires. From your aforesaid letter, and from the enclosures therewith, we deduce the following facts: (1) The prospective candidate is an employee in the Division of Employment Security, and is, therefore, subject to the provisions of the State Merit System Act, Laws of Missouri 1945, Session Acts, page 1157, being House Bill No. 162, enacted by the 63rd General Assembly. (2) The prospective candidate has frankly expressed to his superiors his intention to become a candidate for Congress, but has stated that he does not intend to seek the office to which he aspires until he shall file his declaration pursuant to the provisions of Section 11550, R.S. Mo. 1939, and has also expressed his intention to request a suitable leave of absence before filing his declaration, evidently having in mind the above quoted provision of the State Merit System Act above referred to. (3) Notwithstanding the prospective candidate's expressed intention not to seek the office actively before filing his declaration, the aforesaid letter does set forth certain facts about him, express certain of his convictions, make certain promises, and invite support. This correspondence does not reveal whether or not there has been such circulation or delivery of the letter to voters as might be construed to be a seeking of support for public office.

With the above enumerated facts in mind, we shall first give consideration to the first question in your above mentioned letter.

We believe it should be quite clear from a mere construction of the language employed by the statute that the resignation or the obtaining of a leave of absence must occur before the individual becomes a candidate. As to when an individual becomes a candidate, we suggest that the meaning of the word "candidate" is so broad, so vague and indefinite that it is not susceptible of a uniform construction wherever and whenever used, but must, when used in a specific statute, be construed in the light of the purpose of the particular act in which it is used. That the general meaning of the term is vague and indefinite is affirmed by the very broad definition in C. J., Vol. 9, page 1272, which is in the following words:

"One who seeks or aspires to some office or privilege, or who offers himself for the same; a person offering himself to the suffrage of the electors; one put forward for election, whether with or against his own will; one put forward by others for an office; one who is selected by others for an office or place; a person considered worthy or likely to attain some dignity, or to come to some place or end."

It may be readily seen from the language of the foregoing definition that, according to it, persons might be said to be candidates who do not even aspire to public office. The provision of the State Merit System Act prohibiting employees subject thereto from becoming candidates certainly could not apply to one who does not even aspire to public office but happens to be supported therefor by others.

We are unable to find a statutory definition of the term "candidate," and we are likewise unable to find a judicial construction of the term by an appellate court of this state. A Minnesota case, however, after adverting to the fact that the term is a very indefinite one, holds that the Minnesota statute which provides for filing for nomination in the primary amounts to a definition of a candidate as one who has so filed pursuant to that statute, and holds that an aspirant for public office is not a candidate until he has filed thereunder. The following is

quoted from the opinion of the Supreme Court of Minnesota in that case, State ex rel. Brady vs. Bates, 102 Minn. 104, l.c. 107, 112 N.W. 1026:

"* * * It is apparent, in the nature of things, as it is a familiar experience, that, in the absence of statutory prescription on the subject, the time when a man becomes a candidate is extremely vague and indefinite.

"* * * The law clearly defines who is a candidate under its terms, and how and the time at which an aspirant becomes a candidate. Section 184 provides that at least twenty days before a primary election any person eligible becomes a candidate by, and at the time of, filing his affidavit with a specified official, setting forth, inter alia, the office for which he desires to become a candidate. Upon the filing of this affidavit, and the payment of the required fee, 'the auditor shall place such name upon the primary election ballot* * *"

Section 184 of the Minnesota Revised Statutes, 1905, being the Minnesota statute referred to by the court in the last above quoted opinion, does not differ substantially from Section 11550, R. S. Mo. 1939, being the Missouri Statute providing for filing for nomination for public office.

Under the doctrine of the above quoted case, it would be logical for us to hold that not until an aspirant files under the last above cited statute does he attain the status of a candidate. We consider this Minnesota case to be very persuasive. However, even if this case last cited were to be disregarded, nevertheless, in view of the very broad meaning of the term "candidate," we are driven to the conclusion that the word has a restricted meaning as used in the State Merit System Act, and in order to arrive at a proper construction as to the meaning of the term within said act, reference must be had to the general purposes of the act itself.

With reference to the purpose of the Merit System Act we consider it sufficient to say that the general objective of said act is the promotion of an efficient administration of the departments subject thereto. Section 2(a), State Merit System Act, supra.

In furtherance of this general objective, an incidental objective is the accomplishment of the selection and retention of the personnel of the departments subject to the provisions thereof on the basis of a nonpolitical and nonpartisan consideration of the qualifications for the particular positions to be filled and to keep that personnel free from partisan incentives.

We are of the opinion that this incidental objective of the act led not only to the prohibition against activities in partisan political organizations by individual employees, but also to the prohibition against an employee being a candidate for nomination or election to any public office. In fact both of said prohibitions are embodied in the same section of the act. Section 43(e), State Merit System Act, supra. We are of the opinion that the aforesaid incidental objective of said act led to the incorporation of the following language in Section 5 thereof, which section enumerates the qualifications of members of the Board:

"* * * In order to be eligible for appointment and tenure as a member of the Board, no appointee shall during his term of office, or for at least one year prior thereto, be a member of any local, state, or national committee of a political party or an officer or member of a committee in any partisan political club or organization, or shall hold, or be a candidate for, any elective office."

These provisions of said sections of the aforesaid act clearly show that the prevailing intention of the Legislature in this act is to safeguard the employees and the departments subject to the act from such partisan political influences as might be promoted by membership of an individual on the committee of a political party or by his holding office in a partisan political club or by his taking part in the management of the affairs of any political party, or by his taking part in a political campaign, or by his becoming a candidate for nomination or election to any public office.

With these considerations in mind, we are of the opinion that when the Legislature in the aforesaid State Merit System Act prohibited employees subject thereto from becoming candidates for nomination or election to any public office, except after resigning or obtaining a leave of absence, it intended to prevent such employees from becoming engaged in partisan political activities during the period of their actual employment.

In the light of these conclusions, it seems to us that the meaning of the word "candidate," as used in the State Merit System

Act, supra, is restricted to the status attained by the aspirant when, by filing and declaring his candidacy for a party nomination pursuant to the provisions of Section 11550, R.S. Mo. 1939, he publicly appeals for partisan political support, for the reason that it is not until that time, that he places himself under the party standard and publicly adopts the party label, and because the last mentioned section prescribes the only practicable and lawful method whereby he may be chosen as the nominee of a political party for any public office.

The prohibitions of the State Merit System Act against political activity are indeed so specific that, according to sound principles of statutory construction, no political activity of an employee not specifically mentioned in the act should be deemed to be prohibited thereby. Therefore, the mere fact that an employee aspires to the nomination to a public office and reveals that fact to his superiors, or even invites the support of voters in the event of the occurrence of the uncertain future contingency of his filing for same, does not constitute him a violator of any of the prohibitions of this act directed against partisan political activities. These prohibitions are clearly defined and are limited to: (1) being a member of any national, state or local committee of any political party, (2) being an officer of a partisan political club, (3) taking part in the management of the affairs of any political party, (4) taking part in any political campaign, or (5) becoming a candidate for nomination or election to any public office.

This brings us to your question as to whether the superior is obliged, under the provisions of the act, to grant a leave of absence to an employee who requests same in order that he may become a candidate for nomination or election. In response to this question, we are definitely of the opinion that the granting of such a leave of absence upon request therefor, or the refusal to grant same, is clearly discretionary. The avowed purpose of the State Merit System Act set forth in Section 2(a) thereof is that it is "designed to secure efficient administration." It is quite obvious that the superior must keep this avowed objective of the act in mind and should refuse to grant leave of absence, if in his judgment the granting of same would have a tendency to detract from efficient administration.

CONCLUSION

we are; therefore, of the opinion that an individual does not become a candidate for office within the meaning of the State

Mr. Ralph J. Turner

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Merit System Act until such time as he files his declaration in accordance with the terms and provisions of Section 11550, supra.

We are of the further opinion that, upon so filing, he definitely becomes engaged in partisan political activity by declaring publicly his candidacy for the nomination of a political party and is then definitely within the scope of the prohibition of the act, unless he has first obtained a leave of absence, and that he is, therefore, then a candidate within the meaning of the State Merit System Act.

We are further of the opinion that, under the State Merit System Act, the granting or refusing of a leave of absence to an employee who is a prospective candidate is discretionary rather than mandatory.

Respectfully submitted,

SAMUEL R. WATSON
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

SMW:LR