

RECORDER OF DEEDS: It is not lawful for parties to nominate a candidate for office at this time.

October 5, 1934.

10-22



Hon. T.J. Harper,
Prosecuting Attorney,
Galena, Missouri.

Dear Sir:

This department is in receipt of your letter of September 4, 1933, which is as follows:

"In as much as a complication has arisen relative to the action of the Republican Committee in nominating a person to be placed on the ticket for Recorder of Deeds in this and other South Missouri counties for the coming election, when in fact all parties nominated a candidate for Circuit Clerk and Ex-officio Recorder of Deeds as the law directs in counties of 20,000 or less, it seems that in anticipation of a hearing of the court on the law in question, they are trying to take the 'bull by the horns' as we might say and place a man in nomination at this time when no vacancy occurs. So I would ask the question and your opinion on the law.

Is it lawful for any party to at this time nominate and place on the ticket for election in the fall election for Recorder of Deeds and if after the election the law should be held unconstitutional and the person elected and commissioned as Circuit Clerk and Recorder? Would they hold or what would be the condition of the office?

I.

It appears that many officials in the various counties of the state have the impression that the legislative acts of 1933 consolidating the office of circuit clerk and recorder of deeds in counties of less than 20,000 inhabitants are unconstitutional. We will not undertake to pass on the constitutionality of the law and for the purposes of this opinion will assume that it is constitutional.

Section 11526, Laws of Mo. 1933 p. 360 is as follows:

"There shall be an office of recorder in each county in the state containing 20,000 inhabitants or more, to be styled, 'The office of the Recorder of Deeds.'

Section 11534, Laws of Mo. 1933, page 361 is as follows:

"That in the event any person has been elected or may hereafter be elected to the office of recorder of deeds in a county in which the office is a separate office at the time of such election, such office shall remain a separate office for the entire term for which such person has been or may be elected."

We shall not deal with the other sections as they pertain to consolidation in counties of more than 20,000, and as your county, namely, Stone, is less than 20,000, the two above sections are applicable thereto.

Section 10249, R.S. Mo. 1929 pertains to the duty of the county clerk in regard to publishing the names of the various candidates and offices to be filled and is as follows:

"At least seven days before an election to fill any public office, the clerk of the county court of each county shall cause to be published in two newspapers representing each of the two major political parties, if such there be, and if not, then in two newspapers, or if there be only one newspaper published within the county then in such newspaper, the nominations to office certified to him by the secretary of state, and also those filed in his office. He shall make two such publications in each of such newspapers before the election, one of which publications in each newspaper shall be upon the last day upon which such newspaper is

issued before the election. Provided that no higher rates shall be paid per inch than is provided by section 13773, Chapter 114, R.S. 1929, as amended."

We call your attention to the fact that in all probability the County Clerk of your county did not include in the notice under said section the office of Recorder of Deeds due to the fact that sections 11526 and 11528, R.S. Mo. 1929 and other sections had been repealed by the last legislature and the new sections, quoted supra, enacted in lieu thereof. Therefore, there is no office of Recorder of Deeds existing after January 1, 1935 and no notice has been published stating that nominations are open for this particular office.

CONCLUSION

It is therefore the opinion of this department that it would not be lawful or of any force or effect for either or both parties to nominate candidates at this time for the office of Recorder of Deeds of Stone County.

We do not pass, nor do we express an opinion, as to the constitutionality of this law for the reason that every reasonable presumption should be indulged in favor of the constitutionality of an act of the Legislature. A settled rule of construction on this point has been uniformly declared by the courts of this state to be that a statute will not be declared in conflict with the Constitution where by adopting another equally admissible construction its constitutionality can be upheld.

Respectfully submitted,

OLLIVER W. NOLEN,
Assistant Attorney General

APPROVED:

ROY McKITTRICK,
Attorney General