

ELECTIONS: Candidate for Circuit Judge should file his affidavit in detail regarding expenses of primary with Secretary of State.

10-13

October 11, 1934.



Mr. George E. Heneghan,
418 Olive Street,
St. Louis, Missouri.

Dear Sir:

This department acknowledges receipt of your letter of September 13 in which you request the following questions to be answered:

"(a) With whom should a candidate for the office of Circuit Judge file his affidavit in detail regarding expenses of primary election?

(b) When does the time expire for filing such expense account for expenses incurred in primary elections?"

I

The section relating to the filing of expense accounts by candidates is Section 10482, R.S. Mo. 1929, the pertinent part of which is as follows:

"Every person who shall be a candidate before any caucus or convention, or at any primary election, or at any election for any state, county, city, township, district or municipal office, or for senator or representative in the general assembly of Missouri, or for senator or representative in the congress of the United States, shall, within thirty days after the election held to fill such office or place, make out and file with the officer empowered by law to issue the certificate of election to such office or place,

and a duplicate thereof with the recorder of deeds for the county in which such candidate resides, a statement in writing, which statement and duplicate shall be subscribed and sworn to by such candidate before an officer authorized to administer oaths, setting forth in detail all sums of money *****"

We call your attention to the phrase "make out and file with the officer empowered by law to issue the certificate of election to such office or place", bearing in mind that you have been nominated as Judge of the Circuit Court of the Thirteenth Circuit. We shall next determine as to whose duty it is to issue to you the certificate of nomination. This will be found in Section 10234, R.S. Mo. 1929, which is as follows:

"Certificates of nomination shall be filed with the secretary of state for the nomination of candidates for offices to be filled by the electors of the entire state, or any district or division of a greater extent than one county. For all other nominations to public offices, certificates of nomination shall be filed with the clerks of the county courts of the respective counties wherein the offices are to be filled by the electors."

Section 10260, R.S. Mo. 1929 provides:

"No person shall file more than one written declaration indicating the party designation under which his name is to be printed on the official ballot, and all declaration papers shall be filed as follows: 1. For state officers, representatives in congress, courts of appeals and circuit judges, and those members of the senate and assembly whose districts comprise more than one county, in the office of the secretary of state. 2. For officers to be voted for wholly within one county or in the city of St. Louis, in the office of the county clerk of such county or the office of the election commissioners of the City of St. Louis."

From a reading of Sections 10260 and 10234, supra, we naturally conclude that the City of St. Louis being treated as a county, the phrase "or any district or division of a greater extent than one county" would apply, and you would receive your certificate of nomination from the clerk of the City of St. Louis. We also mention the fact that under Section 10260 the declaration should be filed in the office of the election commissioners of the City of St. Louis; however, it matters not what construction we may personally place upon the two statutes above quoted. The Supreme Court of Missouri made the following decision in the case of State ex rel. v. Roach, 258 Mo., l.c. 551-553:

"The statute, the ambiguous and contradictory terms of which have created the doubt mentioned, is as follows: 'No person shall file more than one written declaration indicating the party designation under which his name is to be printed on the official ballot, and all declaration papers shall be filed as follows: 1. For State officers, representatives in congress, courts of appeals and circuit judges, and those members of the senate and assembly whose districts comprise more than one county, in the office of the Secretary of State. 2. For officers to be voted for wholly within one county or in the City of St. Louis, in the office of the county clerk of such county or the office of the election commissioners of the City of St. Louis.' (Sec. 5862, R.S. 1909)

Even a casual reading of the above section discloses a serious conflict in its provisions, not however in the language used in the section, but in that language when applied to a well-known fact which we judicially notice because embodied in a general law, that is, that the Eighth Judicial Circuit is composed wholly of the City of St. Louis. We must ourselves notice this fact (State v. Pope, 110 Mo. App. 520; Alabama Ins. Co. v. Cobb, 57 Ala. 547; Railroad v. Hyatt, 48 Neb. 161; 1 Chamberlayne, Mod. Ev., sec. 669), and the rules of statutory construction require us to presume, naught else appearing, that the Legislature also held it in mind when the statute was passed. Moreover, the petition herein standing per stipulation as and for the alternative writ, so charges and on demurrer the truth of all matters well pleaded in the petition is admitted.

The above section requires by specifically naming these offices that all candidates for 'state officers, representatives in congress, courts of appeals and circuit judges' shall file their declarations of candidacy 'in the office of the Secretary of State.' It further provides generally that all declarations for nomination 'for officers to be voted for wholly within one county, or in the City of St. Louis', shall be filed in the office of the county clerk of such county, or in the office of the election commissioners of the City of St. Louis. Applying the rule of construction which requires the general provisions of a statute to yield to special provisions, where there is a conflict and where the general expressions in one part of a statute are inconsistent with the more specific provisions in another part of the statute *** we see that candidates for circuit judges are required by a specific provision naming this office to file their declarations with the Secretary of State. We may gather from the whole law a fairly consistent legislative intent to divide the officers into classes, pursuant to which classification (which was as consistent as the facts will permit) and those officers who ordinarily are elected from more than one county are required to file declarations with the Secretary of State, while those who ordinarily are elected from a single county are required to file declarations with the county clerk. The only provision which is in any way inconsistent with this view of the legislative intent, is that relating to a state senator whose district is composed of but one county. This legislative intent, save and except that such inconsistency as to place a filing declaration of candidacy of certain candidates for state senator still inheres, is accentuated by a reference to Section 5860 of the same act. Here candidates for nomination for the office of Circuit Judge are specifically and again by naming the office, required to pay the fees required to the Treasurer of the state central committee, while again county officers are put into another class and are required to pay such fees to the treasurer of the county central committee.

It was early announced as a rule of statutory construction in this state that effect shall if possible be given to the whole and every part of a statute. *****
*** This rule is wellnigh universal in all jurisdictions and is without exceptions, save that the interpretation reached by the application of the rule should be reasonable and not out of accord with the legislative intent. *****

Unless we say that candidates for nomination for Circuit Judge in the Eighth Judicial Circuit must file their declarations of candidacy with the Secretary of State and not with the board of election commissioners of the City of St. Louis, we are compelled to excise as meaningless from Section 5862 the words 'circuit judges'. For we cannot reach this conclusion until we cut out and cast away these words from clause 1 of the above section. It is persuasive but concededly not in any manner decisive, that still another general classification was in the legislative mind. That is, that county officers (and city officers elected at general elections) were put in one class and all other officers (again except a state senator from a single county) were placed in another class.

These considerations induce us, while conceding the existence of some argument for the other view, to believe that the rules of statutory construction and the great weight of reason lies with the view that declarations of candidacy for nomination for circuit judge of the Eighth Judicial Circuit should be filed with the Secretary of State, and so we hold."

Conclusion

If under Section 10260, R.S. Mo. 1929 a declaration of your candidacy for Circuit Judge is to be filed with the Secretary of State, then, by the same argument under Section 10234, supra, the certificate of nomination to you would necessarily be the duty of the Secretary of State.

Proceeding further, the phrase "make out and file with the officer empowered by law to issue the certificate of election to such office or place", as contained in Section 10482, supra, would compel you to file your affidavit in detail regarding expenses

of the primary election with the Secretary of State.

II

As to your question dealing with the expiration of the time for filing such expense account, we have recently rendered an opinion to the Honorable Austin Sneed, Clerk of the County Court of Newton County wherein we have tried to exhaustively cover this question. A copy of this opinion is being enclosed herewith and we believe it will properly answer the second question contained in your inquiry.

Respectfully submitted,

OLLIVER W. NOLEN,
Assistant Attorney General

APPROVED:

ROY MCKITTRICK,
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OWN: AH
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