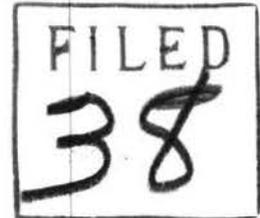


ELECTIONS: Challengers and watchers in City of St. Louis must be appointed by Chairman or presiding officer of the chief managing committee of each political party having representation on the Board of Election Commissioners.

June 25, 1940

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Honorable Charles M. Hay  
Chairman, Board of Election Commissioners  
208 South 12th Blvd.  
St. Louis, Missouri



Dear Sir:

We have received your letter of June 12th, which reads as follows:

"Section 43 of the Permanent Registration Law applicable to the City of St. Louis provides that challengers and watchers shall be designated and certified by 'the recognized chairman or presiding officer of the chief managing committee of a party in any such city.' Section 10270 of the law applicable to primary elections provides that the challengers and watchers shall be appointed by the Ward Committeemen in any city with a population of over 300,000.

Heretofore, the practice has been to recognize the Chairman of the City Committee as the proper person to appoint watchers and challengers.

Because of the ruling of the Supreme Court in the case involving the destruction of the ballots cast in an election in this city, to the effect that the general law applicable to the whole state superseded the law applicable to the city alone, although the latter was

enacted subsequent to the former, the question has been raised with respect to the right of the Chairman of the Committee to make the appointments and the suggestion made that perhaps the appointments should be made by the Ward Committeemen in a primary election.

We will greatly appreciate it if you would let us have your opinion on this proposition at your very earliest convenience."

As you have stated, Section 10270, R. S. Mo. 1929, which is contained in the general laws dealing with primary elections, provides as follows:

"The county, ward or township committeeman of each party in each county, or the ward committeeman in any city with a population of over 300,000, may appoint two party agents or representatives, with alternates for each, who may represent his party at the polling place in each precinct during the casting, canvass and return of the vote at a primary, who shall act as challengers and witnesses to the count of the vote for their respective parties, and have the power prescribed by law."

You have also called our attention to Section 43 of the permanent registration laws applicable to all cities of 600,000 or more inhabitants. This particular act, of course, applies only to the City of St. Louis, and is found in Laws of Mo. 1937, page 235 to 278, inclusive. Section 43, as passed by the legislature in 1937, reads as follows:

"At every registration and election,

each one of the political parties, having representation on the Board, shall have the right to designate and keep a challenger at each place of registration, revision, of registration and voting who shall be assigned such position immediately adjoining the judges of election inside the polling or registration booth, as will enable him to see each person as he offers to register or vote, and who shall be protected in the discharge of his duty by the judges of election and the police. And authority signed by the recognized chairman or presiding officer of the chief managing committee of a party in any such city, shall be sufficient evidence of the right of the challenger for such party to be present inside the registration or polling place. But in case any challenger does not or cannot produce the authority of such chairman, it shall be the duty of such judges of election to recognize a challenger that shall be vouched for and presented to them by the persons present belonging to such political party, or who shall be vouched for by the judge representing such party. The chairman of the managing committee of such political party for such city may remove any challenger appointed by him, and substitute another in his place. The challenger so appointed and admitted to the room where such ballot box is kept shall have the right and privilege of remaining during the canvass of the votes, and until the returns are duly signed and made. Each political party shall also have the right to a challenger placed conveniently outside of the polling booth, but not in the way of the voters. In addition to such challengers, each of the political parties having representation on the Board, at the close of the polls shall have the right to the admission of two persons of their political faith into the room where such ballots

are to be canvassed, to watch such canvass, which watchers may be selected as above prescribed in case of challengers; and in the absence of such selection, it shall be the duty of the judges of such election to admit into such room two persons of such political party, and who shall be vouched for by the judge or judges representing such political party, to be present during the canvass of such votes and the making of such returns; that such persons shall be of good character and sober, and shall in no wise interfere with such canvass. The police shall in no manner interfere with the entrance of such watchers into such room, but they shall keep order; and in case of any disorderly conduct on the part of any bystanders or watchers, it shall be the duty of the police, upon request of the judges, to exclude such persons from such room, and upon such watcher or watchers being excluded from such room, the judge or judges representing the same political party as the rejected watcher may select other watchers in their stead."

We have quoted both of the above statutes in full in order to show that Section 10270 contained in the 1929 Revised Statutes deals with the subject of the appointment of challengers and watchers in general and comprehensive terms, while Section 43 of the 1937 Act applicable only to the City of St. Louis deals with the same subject in a more minute and definite way. In this connection, the Supreme Court of Missouri en banc, in the recent case of State ex rel City of Springfield vs. Smith, 125 S.W. (2d) 883, l.c. 885, said:

"It is familiar doctrine that when there is one statute dealing with a subject in general and comprehensive terms

and another dealing with a part of the same subject in a more minute and definite way, the two should be read together and harmonized, if possible, with a view to giving effect to a consistent legislative policy, but to the extent of any necessary repugnancy between them, the special will prevail over the general statute. Where the special statute is later, it will be regarded as an exception to, or qualification of the prior general one; \* \* \* \*."

Consequently, since the special act dealing only with St. Louis is also the last act passed on the subject, it is to be regarded as an exception to or qualification of the prior general act and the terms of the special act are in force and effect. This means that the "recognized chairman or presiding officer of the chief managing committee" has the right to appoint such challengers and watchers and to assign the authority which must be recognized at the polls. Incidentally, the procedure outlined in Section 43 is applicable to primary, as well as general, elections. Section 43, supra, states that "at every registration and election" each of the political parties, through the recognized chairman of the chief managing committee shall have the right to designate and appoint challengers. Subsection (d) of Section 2 of the same act, Laws of Missouri 1937, page 237, defines the word "election" as it is used in the entire act. Subsection (d) reads as follows:

"(d) 'Election' shall mean any general, special, municipal and primary election unless otherwise specified, and shall include a submission to a vote of the people of any amendment, law or other public act, or proposition."

Your particular concern seems to be the effect, if any, of a recent ruling of the Supreme Court involving the

destruction of ballots in which the general law applicable to the whole state was held to be in full force and effect rather than the special act applicable only to the City of St. Louis. The case you refer to is State ex rel Miller, Circuit Attorney, vs. O'Malley, Judge, 117 S. W. (2nd) 319. In that case, the Supreme Court en banc did not hold that a prior general statute was in full force and effect as against a later and valid special statute. The Court held that the later and special statute was unconstitutional and void and for that reason the general statute was applicable. There remained no valid special act covering the matter. The Court said, l.c. 326:

"Since section 10619 (the special statute) is unconstitutional in so far as it purports to authorize the preservation and use of the ballots as evidence in grand jury investigations of election frauds until the final determination thereof, it follows that section 10315 is the statute applicable to this case. Whether the former be considered merely an exception to the latter, or whether (as relator contends in one part of his brief) it was to the extent mentioned a repealing statute because special and enacted later, in either event section 10315 in the general election law still stands and governs the proceedings below. The law on this point is stated in a headnote to Cope-land v. City of St. Joseph, 126 Mo. 417, 29 S. W. 281, which accurately reflects the holding in the opinion: 'Although an act, by its terms, repeals all parts of former acts inconsistent with, or repugnant to, its provisions, yet it will not repeal a section of the former act corresponding in substance with a section of the new act, where the latter section is unconstitutional.'"

Consequently, it seems apparent that the Supreme Court had no thought in the above case of attempting to overturn

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the well established rule that a later enacted special act covering the same subject matter as a prior general act would be regarded as an exception to or qualification of the prior general act, and that the special act under such circumstances would control.

#### CONCLUSION

Section 43 of the permanent registration law applicable to the City of St. Louis (Laws of Missouri 1937, page 261) is the applicable statute pertaining to the appointment of challengers and watchers in elections in the City of St. Louis. This section provides that the "recognized chairman or presiding officer of the chief managing committee" of a political party having representation on the board shall appoint challengers and watchers and shall furnish each of the persons so appointed with written authority properly signed. Section 10270 R. S. Mo. 1929, being a general section dealing with the appointment of watchers and challengers, over the entire state, is therefore not applicable to the City of St. Louis because of the later enacted special statute.

Respectfully submitted,

J. F. ALLEBACH  
Assistant Attorney General

APPROVED:

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(Acting) Attorney General  
JFA:RT