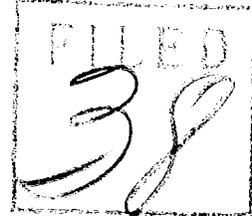


ELECTIONS: City Committee may nominate candidates for unexpired terms of members of the Board of Aldermen.

February 3, 1941.

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



Dear Mr. Hay:

This is in reply to yours of recent date, wherein you submitted the question on whether or not the political Central Committees of the City of St. Louis are authorized to nominate persons to be elected to fill vacancies on the Board of Alderman of that city.

Under Article XIII, Chapter 61, R. S. Mo. 1929, special provisions are made for primary elections in cities having 400,000 population or more. The case of State ex rel. vs. Edwards et al, 206 Mo. 496 held that, this Article applied especially to the City of St. Louis. Nominations for candidates, insofar as they apply to your question, is provided for in Section 10438 as follows:

"Hereafter all candidates for elective offices other than those to be elected at a general state election and all special elections to fill vacancies in cities of this state which now have or which hereafter acquire 400,000 inhabitants or more, shall be nominated at a primary election by the direct vote of the qualified voters of such cities or by certificates of election, in accordance with the provisions of this article. * * * "

The language of this part of said section would indicate that the lawmakers intended that the nominee for the election to fill a vacancy should be nominated at the primary. Section 10452 R. S. Mo. 1929 and of this same Article, provides as follows:

"Vacancies occurring after the holding of any primary or where no person shall offer himself as a candidate before such primary, shall be filled by the party committee of such city: Provided, however, that no name shall be allowed on any ticket until the required fee shall have been paid."

Section 5 of Article IV of the Charter of the City of St. Louis, provides as follows:

"Any vacancy in said board shall be filled for the unexpired term at the next general city or state election held fifty days or more after such vacancy occurs; provided, that whenever three or more vacancies exist in said board such vacancies shall be filled at a special election; but no such special election shall be held within three months prior to any general city or state election."

Sections 21 and 22 of the Revised Code of St. Louis 1936, reads as follows:

"Whenever a vacancy exists in the office of president of the board of aldermen or a vacancy exists or vacancies exist in the membership of the said board, the political central committees of the City of St. Louis recognized by the laws of

the State of Missouri are hereby authorized each to nominate by a vote of a majority of such central committee, including in such committee any successor of any member which successor has been recognized as such successor by such committee, a person or persons of the same political belief and party as the said nominating committee, and having the qualifications to hold such office to fill the same for the unexpired term."

"It shall be the duty of such central committees to certify to the board of election commissioners the name of the person or persons nominated, and also the party which such nominee or nominees shall represent. Such certificate or certificates of nomination shall be signed and executed by the presiding officer and secretary of the central committee making such nomination or nominations; provided that in case of the inability of the presiding officer or secretary of any central committee to perform such duty, the officers or officer thereof next in rank or all the remaining officers shall sign and execute such certificate or certificates of nomination, which shall be accepted as if executed by the presiding officer and secretary."

By reading said Sections 21 and 22 of the Revised Code and Section 10438 R. S. Mo. 1929, it seems that there is a conflict in the manner of nominating candidates for an unexpired term as Alderman. Under Section 23 of Article IX of the Constitution of Missouri, it pertains to the Charter of the City of St. Louis and provides as follows:

"Such charter and amendments shall always be in harmony with and subject to the Constitution and laws of Missouri, except only that provision may be made for the graduation of the rate of taxation for city purposes in the portions of the city which are added thereto by the proposed enlargement of its boundaries. * * * "

Section 25 of this same Article of the Constitution, provides as follows:

"Notwithstanding the provisions of this article, the General Assembly shall have the same power over the city and county of St. Louis that it has over other cities and counties of this State."

So it would seem from these two provisions of the Constitution that, if the ordinances or charter of the city of St. Louis are not in harmony with the Constitution and laws of the state, then such charter and amendments must yield to the provisions of the Constitution and laws of the State.

Section 10468 R. S. Mo. 1929, which is found in said Article XIII, provides as follows:

"Full power and authority are hereby conferred on every city in this state which now has, or may hereafter have, more than 400,000 inhabitants, to provide for and regulate all elections (for offices of and under such city and) for the nomination of candidates for such offices; and such provision for and regulation of such elections may be effected either by charter provisions therefor adopted by the people of

such city, according to law, or ordinances therefor duly enacted or by the people thereof under the power of initiative, if any, reserved in the charter of such city."

and Section 10469 of the same Article, provides as follows:

"Whenever any such charter provisions or ordinances so enacted shall take effect, such charter provisions or ordinances shall be deemed to supersede and render inapplicable as to such city, the provisions of the statutes of this state relating to municipal elections and nominations therefor which shall have been applicable to such city prior to the taking effect of such charter provisions or ordinances: Provided, that nothing herein contained shall be taken or deemed to affect the conduct and supervision of such elections by the duly constituted election officials appointed according to law for such city."

If Section 10438 were the only section of the statute to be considered in connection with your question, then we would say a candidate to fill a vacancy on the Board of Aldermen should be nominated as provided by that section, because we think it would take precedence over the provisions of the ordinances and charter of the city. However, by said Section 10468 and 10469, supra, the lawmakers apparently have provided that, if the city, by its charter or ordinance provides for the nomination for such special election to fill a vacancy, then the provisions of the charter or ordinance will prevail over the general statute applying to primary elections in such cities.

Hon. Charles M. Hay

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CONCLUSION.

It is, therefore, the opinion of this Department that the political Central Committee of the City of St. Louis is authorized to nominate persons to be elected to fill vacancies on the Board of Aldermen of that city at the April elections.

Respectfully submitted,

TYRE W. BURTON
Assistant Attorney-General

APPROVED:

COVELL R. HEWITT
(Acting) Attorney-General

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