

ELECTION LAWS: Section 11539, Laws Mo. 1941, p. 355 and Section 11539, Laws Mo. 1941, p. 365, when considered together are not in conflict.

May 22, 1944

Honorable Gregory C. Stockard
Secretary of State
Jefferson City, Missouri



Dear Mr. Stockard:

The Attorney-General acknowledges receipt of a letter from your predecessor, Honorable Dwight H. Brown, dated April 11, 1944, requesting the opinion of this Department, which letter of request reads as follows:

"The 1941 General Assembly enacted House Bill 502, which was approved by the Governor July 24, 1941, repealing Section 11539, Revised Statutes of Missouri 1939, and enacting a new Section 11539 in lieu thereof as set forth at page 365, Laws of Missouri 1941. Likewise the same session of the General Assembly enacted Senate Bill 79, which was approved by the Governor July 31, 1941, repealing Section 11539, Revised Statutes of Missouri 1939, and enacting a new Section 11539 in lieu thereof, as set forth at page 355 Laws of Missouri 1941.

"Senate Bill 79 empowers the central committee to fill vacancies on a ticket previously nominated 'resulting from death or resignation and not otherwise,' while House Bill 502 empowers the central committee to fill vacancies on a ticket previously nominated but not limited to vacancies resulting from death or resignation. House Bill 502 also specifically empowers the central committee to fill any vacancy occurring in such committee while Senate Bill 79 apparently is silent on this point.

"Will you kindly give this office your opinion as to the proper construction of the above enactments?"

Section 11539, Laws of Missouri, 1941, page 355, reads as follows:

"The central committee of a political party shall consist of the largest body elected for the purpose of representing and acting for the party in the interim between conventions of the party. That for the purpose of making nominations to fill vacancies resulting from death or resignation and not otherwise, on a ticket previously nominated a majority of all the members-elect of a central committee shall be necessary to take action. That a central committee shall not have the power to delegate its authority to make nominations to any person or number of persons, and that any act consequent upon any such delegation of authority shall be held to be null and void. That no central committee shall have the power to substitute, to fill any vacancy, the name of any person who is not known to be of the same political belief and party as the person for whom he is substituted.

"Approved July 31, 1941."

Section 11539, Laws of Missouri, 1941, page 365, reads as follows:

"The Central Committee of a political party shall consist of the largest body elected for the purpose of representing and acting for the party in the interim between Conventions of the party. That for the purpose of making nominations to fill vacancies on a ticket previously nominated a majority of all the members-elect of a Central Committee shall be necessary to take action. That a Central Committee shall not have the power to delegate its authority to make nominations to any person or number of persons, and that any act consequent upon any such delegation of authority shall be null and void. That the Central Committee shall have the power to fill any vacancy occurring in such committee by resignation, death or otherwise of a member, by naming any person known to be

of the same political belief and party
of the person for whom he or she is sub-
stituted to fill such vacancy."

"Approved July 24, 1941."

Reference to the July 24, 1941 Act shows that provision is made for nominations to fill "vacancies," whereas, the July 31, 1941 Act provides for nominations to fill "vacancies resulting from death or resignation and not otherwise." Reference to the above described acts will also show that provision is made in the former act for power of appointment by the Central Committee to fill any vacancy occurring in such committee "by resignation, death or otherwise" of a member. This does not change the effect of the provisions in the July 31st Act.

If these two new sections of the statutes were ambiguous or were in conflict with each other, we would use certain well established rules of construction, but we are unable to see that there is either ambiguity or conflict in them. These two statutes, passed at the same session of the Legislature, taking effect at the same time and relating to the same general subject, should be construed together and if possible harmonized so as to give effect to each.

As stated in *State v. Harris*, 337 Mo. 1052, 87 S. W. (2d) 1026, 1. c. 1029:

"Assuming for the purpose of this case that section 4428 is a valid enactment, we have, then, two legislative acts passed at the same session of the Legislature, taking effect at the same time and relating to the same general subject. They should be construed together and if possible harmonized so as to give effect to each. *Gasconade County v. Gordon et al.*, 241 Mo. 569, 581, 145 S. W. 1160. If, however, the statutes are necessarily inconsistent, that which deals with the common subject-matter in a minute and particular way will prevail over one of a more general nature. *Gasconade County v. Gordon et al.*, supra. The rule is thus stated in *State ex rel. County of Buchanan v. Fulks et al.*, 296 Mo. 614, 626, 247 S. W. 129, 132, quoting from 36 Cyc. 1151:

"Where 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 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; and where the general act is later, the special will be construed as remaining an exception to its terms, unless it is repealed in express words or by necessary implication."

"See, also, announcing the same rule, State ex inf. Attorney General v. Dabbs, 182 Mo. 359, 81 S. W. 1148; Gilkeson v. Missouri Pac. R. Co., 222 Mo. 173, 204, 121 S. W. 138, 24 L.R.A. (N.S.) 844, 17 Ann. Cas. 763; State ex rel. American Central Ins. Co. v. Gehner, 315 Mo. 1126, 1132, 280 S. W. 416, 418."

Conclusion

It is the opinion of this department that Section 11539, Laws of Missouri, 1941, page 355, and Section 11539, Laws of Missouri, 1941, page 365, are not inconsistent and when read together are in complete harmony, and full force and effect is to be accorded each section.

Respectfully submitted,

APPROVED:

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RCL:EG