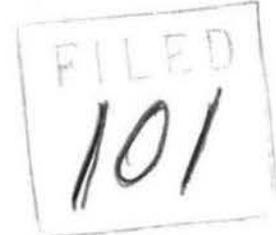


Opinion No. 101 Ans. by Letter
(Stephan)

March 19, 1964



Honorable Frank M. Karsten
Member, United States House
of Representatives
Washington, D. C.

Dear Mr. Karsten:

This is in response to your letter of January 20, 1964, inquiring as to the amount which may be legally expended by a candidate for the United States Congress from the First Congressional District in the August 1964 primary election as well as the November 1964 general election.

Such matters are provided for generally in Chapter 129, RSMo 1959, and specifically in Section 129.100 which reads as follows:

"No candidate for congress or for any public office in this state, or in any county, district or municipality thereof, which office is to be filled by popular election, shall by himself or by or through any agent or agents, committee or organization, or any person or persons whatsoever, in the aggregate pay out or expend, or promise or agree or offer to pay, contribute or expend any money or other valuable thing in order to secure or aid in securing his nomination or election, or the nomination or election of any other person or persons, to any office to be voted for at the same election, or in aid of any party or measure, in excess of the sum of eight dollars for each one hundred voters. The

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number of voters shall be ascertained by the total number of votes cast for all the candidates for president in the state, or in any county, district or municipality thereof, at the last preceding regular election held to fill the same. Any payment, contribution or expenditure, or promise, agreement or offer to pay, contribute or expend any money or other valuable thing in excess of said sum, for such objects or purposes, is hereby declared unlawful. For the purpose of this section, a primary election and the following general election shall be considered separate elections."

Examination of Section 128.212, Cum. Supp. 1963 reveals that the First Congressional District is now composed of the wards in the City of St. Louis and the townships in St. Louis County which are listed below. The Boards of Election Commissioners of the city and county provided the figures which appear below. The figures to the right of the named political subdivision represent the votes cast in each such area in the 1960 presidential election with the letter "K" reflecting the number of votes cast for John F. Kennedy and "N" reflecting the number of votes cast for Richard M. Nixon:

COUNTY

Florissant Township	(K)	17,989
	(N)	9,322
St. Ferdinand Township	(K)	21,728
	(N)	10,475
Normandy Township	(K)	10,805
	(N)	6,617
Washington Township	(K)	5,282
	(N)	2,782

CITY

Ward 1	(K)	8,429
	(N)	4,902

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CITY (continued)

Ward 2	(K)	5,918
	(N)	2,515
Ward 3	(K)	6,051
	(N)	1,997
Ward 4	(K)	9,071
	(N)	1,911
Ward 5	(K)	7,230
	(N)	1,142
Ward 19	(K)	6,557
	(N)	1,017
Ward 20	(K)	8,491
	(N)	2,493
Ward 21	(K)	6,763
	(N)	3,087
Ward 22	(K)	8,500
	(N)	1,825
Ward 27	(K)	7,914
	(N)	4,059
		<hr/>
	TOTAL	184,872

We are aware of the fact that, after the 1960 presidential election (although prior to the general election of 1962), the boundaries of the First Congressional District were changed. However, we believe that a fair reading of Section 129.100, supra, requires that it be applied, where there has been a boundary change, by determining the total votes cast in the last presidential election in the area that now comprises the district and subjecting this figure to the workings of the formula prescribed in Section 129.100.

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Therefore, on the basis of the figure set out above, it appears that the maximum expenditure, under Missouri law, that can be made by a candidate for election to the United States House of Representatives from the First Congressional District would be \$14,789.76. This amount was determined by dividing the total number of votes cast in the area that now comprises the First Congressional District in the 1960 presidential election by one hundred and multiplying the quotient by eight dollars, i. e., $\frac{184,872}{100} \times \$8.00 = \$14,789.76$.

As you will note from the final sentence of Section 129.100, the primary and the following general election are regarded as separate elections. Therefore, insofar as state law is concerned, the maximum expenditure in each election will be the figure set out above.

Turning to applicable federal statutes, however, we find a considerably smaller amount permitted. Section 248, Title 2, USCA, reads as follows:

"(a) A candidate, in his campaign for election, shall not make expenditures in excess of the amount which he may lawfully make under the laws of the State in which he is a candidate, nor in excess of the amount which he may lawfully make under the provisions of this title.

"(b) Unless the laws of his State prescribe a less amount as the maximum limit of campaign expenditures, a candidate may make expenditures up to--

"(1) The sum of \$10,000 if a candidate for Senator, or the sum of \$2,500 if a candidate for Representative, Delegate, or Resident Commissioner; or

"(2) An amount equal to the amount obtained by multiplying three cents by the total number of votes cast at the last general election for all candidates for the office which the candidate seeks, but in no event exceeding \$25,000 if a candidate for Senator or \$5,000 if a candidate for Representative, Delegate, or Resident Commissioner.

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"(c) Money expended by a candidate to meet and discharge any assessment, fee or charge made or levied upon candidates by the laws of the State in which he resides, or expended for his necessary personal, traveling, or subsistence expenses, or for stationery, postage, writing, or printing (other than for use on billboards or in newspapers), for distributing letters, circulars, or posters, or for telegraph or telephone service, shall not be included in determining whether his expenditures have exceeded the sum fixed by paragraph (1) or (2) of subdivision (b) as the limit of campaign expenses of a candidate."

According to the 1963-1964 Roster published by the Missouri Secretary of State, the total vote in the 1962 general election for Representative from the First Congressional District was 116,305 (82,216 you received plus 34,089 received by your opponent). By applying the formula prescribed by subsection (b) (2) of Section 248, supra, to this figure, we arrive at the amount of \$3,489.15 as the maximum expenditure in the forthcoming campaign.

It should be noted, however, that subsection (c) of the statute in question specifically excludes many items, the cost of which might otherwise be regarded as campaign expenditures. Furthermore, subsection (a) of Section 241, which defines terms employed in subsequent sections including Section 248, provides that "The term 'election' includes a general or special election, but does not include a primary election or convention of a political party; . . ." Hence, the limitations imposed by Section 248 would not apply in the coming primary election.

Therefore, in the primary election, only the law of this state will apply which, as discussed above, limits expenditures to \$14,789.76. In the general election, however, the federal statutes will operate to limit expenditures other than those excluded by Section 248 to \$3,489.15. And, of course, the limitation imposed by Section 129.100, RSMo 1959, will still apply to general election expenditures though it would not ordinarily be operable unless large expenditures are made in the categories excluded by Section 248, Title 2, USCA.

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We sincerely hope that the foregoing will be of assistance to you.

Very truly yours,

THOMAS F. EAGLETON
Attorney General

AJS:lt:lo