

August 13, 1969

OPINION LETTER No. 240

Honorable William R. Royster  
Representative - 8th District  
1021 Scarritt Building  
818 Grand Avenue  
Kansas City, Missouri 64106

Dear Representative Royster:

This letter is in response to your opinion requests, both received under separate cover but both concerning the same subject matter.

The first request questions whether the City Council of the City of Grandview, Missouri, has the power by ordinance to judicially determine who may swear in an elected official and whether such an ordinance is valid.

This question is answered by the provisions of the statute with respect to the persons having the authority to administer oaths. That is, Section 79.260, RSMo 1959, with respect to officers of fourth class cities states that such officers before entering upon the duties of the office shall take and subscribe to an oath or affirmation before some court of record in the county or the city clerk. The answer to your first question is therefore clearly that the statutory provisions govern and an ordinance which purports to determine who has the authority to swear in such officers is not valid.

The second question is whether the City Council of the City of Grandview, Missouri, has the power by enactment of an ordinance to judicially determine whether or not an individual could take office after having been elected city marshal and certified the winner by the election board.

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It is our understanding that the Board of Aldermen of the City of Grandview, Missouri, by ordinance purported to determine that the person elected marshal was not duly qualified and that he should not be issued a certificate of election or allowed to take office.

The City of Grandview has a population in excess of ten thousand persons, is located in Jackson County, and is within the provisions of Section 113.530, RSMo 1959, which provides:

"In all cities or towns in such county, having a population of not less than ten thousand nor more than one hundred thousand inhabitants, in all municipal elections the provisions of sections 113.490 to 113.870 shall apply."

Accordingly, the provisions of Chapter 113.490, RSMo 1959, et seq., relating to Jackson County elections (outside of Kansas City) apply to the conduct of this municipal election.

Section 113.560, RSMo 1959, provides in full as follows:

"Power of board to conduct elections, certify returns--rules and regulations. --The board shall have full and complete power to conduct any and all elections in the county and to receive and certify the returns thereon. The board shall certify the returns to the proper officer upon whom falls the duty of issuing certificates of election. The board shall make any necessary rules and regulations for the conducting of the business of the board and for the expeditious and efficient handling of the business of the board and of the board or registry thereof."

The proper officer in this instance to whom the returns are certified by the election board is the city clerk. Section 79.030, RSMo 1959. The general provisions of Section 79.030 which are in conflict with the special provisions contained in Sections 113.490, et seq., do not apply. Therefore, the Board of Aldermen is not charged with making the returns of such elections or prescribing the manner of making of such returns by ordinance. We note with interest that in State ex rel vs. Newman, 3 S.W. 849, 91 Mo. 445, a mandamus proceeding, the aldermen of the city, whose duty it was to canvass the election returns to determine who had been chosen

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to the various offices and to direct the clerk to issue certificates of election to the persons elected, declined to direct the clerk to issue the certificate of election to the person elected mayor basing their refusal upon the fact that the relator was not an inhabitant of the city as required by law. The court held that the election of a person to an office who does not possess the requisite qualifications gives him no right to hold the office and stated:

"As, by reason of his qualifications, the relator was not entitled to hold the office, surely he has no right at the hand of the court to be armed with a certificate of election--evidence of title to that which he has no right."

The court in that instance accordingly refused to issue a writ of mandamus; and although the court did not specifically pass upon the question concerning the Board's authority to make such a determination, it is clear from the holding that the court was not inclined to allow a person to take title who clearly had no right to the office. In another instance, in State ex inf vs. Moss, 172 S.W. 1180, 187 Mo.App. 151, the Kansas City Court of Appeals considering the refusal of the Board of Aldermen of a city of the fourth class to meet in an extra session and canvass returns of an election and to certify the result, concluded that such duties are purely ministerial. There is some additional comment by the court at l.c. 1181, which by dictum indicates that possibly qualifications may be inquired into in a mandamus proceeding to compel the performance of a ministerial duty.

Notably, also in State ex rel vs. Williams, 12 S.W. 905, 99 Mo. 291, the Supreme Court of Missouri in a mandamus action involving the eligibility of a person for the office of marshal of the City of St. Louis denied the writ for the reason that the court found that the relator did not possess the requisite qualifications and further, at l.c. 911, indicated that the result would be the same even if doubt existed concerning relators eligibility.

Further, in State ex rel vs. Roach, 150 S.W. 1073, 246 Mo. 56, the court at l.c. 1077, citing with approval State ex rel vs. Shannon, 33 S.W. 1137, 133 Mo. 139, stated:

"The court also quotes with approval the following from the case of People ex rel vs. Canal Appraisers, 73 N.Y. 443: 'When the act, the doing of which is sought to be

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compelled by mandamus, is the final thing, and, if done, gives to the relator all that he seeks proximately or ultimately, then the question whether he is entitled to have that act done may be inquired into by the officer or person to whom the mandamus is sought, and is also to be considered by the tribunal which is moved to grant the mandamus; but where the act to be done is but a step towards the final result, and is but the means of setting in motion a tribunal which is to decide upon the right to the final relief claimed, then the inferior officer or tribunal may not inquire whether there exists the right to that final relief, and can only ask whether the relator shows a right to have the act done which is sought from him or it.' "

We conclude that the question of eligibility is a matter for determination by a court of proper jurisdiction and that the Board of Aldermen does not have the authority to make a judicial determination of a person's qualifications for such office.

Very truly yours,

JOHN C. DANFORTH  
Attorney General