

ELECTION:
ELECTION JUDGES:

Committeemen and committeewomen of both political parties are not qualified to serve as election judges and clerks under the terms of Section 111.171, V.A.M.S., 1969-70 Cum. Supp.

OPINION NO. 237

April 3, 1970

Honorable Ted Salveter
State Representative
District 142
1005 Woodruff Building
Springfield, Missouri 65806



Dear Representative Salveter:

This letter is in response to your request for an official opinion of this office on the following question:

"In the next few weeks there will be several city, county, state and other elections, particularly the one on April 7, 1970. A question has arisen whether Committeemen and Committeewomen of both political parties are now forbidden to work as judges and clerks under Section 111.170, RSMo, 1969, Sub-Section 1."

Subsection 1 of Section 111.171, V.A.M.S. 1969-70 Cum Supp. states as follows:

"1. No person shall be qualified to act as judge or clerk of any registration or election in this state unless he is legally entitled to vote at the next election following his appointment. He must be a person of good repute and character who can speak, read and write the English language. He must reside in the precinct, ward, township or election district for which he is selected to act. He must not hold any office or employment under the United States, the state of Missouri, or under the county, city, or other political subdivision involved in the election to be held at the time of his appointment. He must not be a candidate for any office at the next ensuing election but a notary public shall not be disqualified from acting as a judge or clerk."

Honorable Ted Salveter

Do party committeemen ". . . hold any office . . . under . . . the state of Missouri, or under the county, city, or other political subdivision involved in the election to be held at the time of his appointment. . . ."?

In State ex rel. Ponath v. Hamilton, 240 S.W. 445 (Mo. en banc 1922) the Court concluded that an election for party committeemen involved an election for a county office so as to permit an election contest under Section 4896, RSMo 1919, now Section 124.250, RSMo 1959:

"We conclude, therefore, not from inference or implication, but from an interpretation based upon the nature and purpose of the statute creating party committeemen and the uniform character of the duties devolving on them as such, regardless of whether they are elected in the city of St. Louis by wards or in a county be townships, that they are, so far as affects their official tenure and the right to maintain and establish same, county officers; and hence within the purview of the section (4896, R. S. 1919) regulating contested elections." Id. at 448

Before reaching this conclusion, the Court had pointed out that "The law specifies the terms and prescribes the powers of the committeemen. This exercise of power characterizes all statutes defining public officers. . . ." Id. at 447. After listing the statutorily imposed duties, the Court stated as follows:

". . . It is therefore from the nature of the duties the law imposes on him that the character of his position is to be determined. We have shown that the law defines the duties and that their performance involves the discharge of certain functions of government. This, without more, is sufficient to authorize the classification of such a committeeman, if not as a public officer in the full sense of the term, as holding a position analogous thereto." Id. at 447

In State ex rel. Dawson v. Falkenhainer, 15 S.W.2d 342 (Mo. en banc 1929) relator argued that a party committeeman elected at a primary election is not an officer so that the statutes applying to election contests for officers do not apply. The Court held that the election of a ward committeemen in the City of St. Louis was an election of a public officer:

Honorable Ted Salveter

"Notwithstanding authorities to the contrary, this court has held in *State ex rel. Ponath v. Hamilton* (Mo. Sup.) 240 S.W. 445, and supported the holding by authorities from other states, that a political committeeman is a public officer within the purview of section 4896, R. S. 1919, which provides for election contests. In that case this court carefully analyzed out statutes, and pointed out the particular provisions which place certain duties and obligations upon the political committeeman, such as to constitute him a public officer, holding that his powers are a matter of public concern. While his official duties pertain only to the management of the affairs of his party, still they affect the welfare of the entire community and exercise some of the functions of government. It is just as important that he should be honestly elected as any official, the exercise of whose powers and authority affects the welfare of the community. Our statute, in creating the office of political committeeman, provided for it most responsible functions, whose discharge affects the general welfare." *Id.* at 343

See, also, *Noonan v. Walsh*, 364 Mo. 1169, 273 S.W.2d 195 (Div. 2, 1954) in which the Court stated as follows:

"A committeewoman is elected under the statutes enacted by the General Assembly and is charged with the duty of performing certain functions of government, *State ex rel. Ponath v. Hamilton*, Mo., 240 S.W. 445, and is, therefore, a 'public officer.' *State ex rel. Kaysing v. Ryan*, 334 Mo. 743, 67 S.W.2d 983; *State ex rel. Dawson v. Falkenhainer*, 321 Mo. 1042, 15 S.W.2d 342. And, since an election contest involves 'the title to any office under this state'. V.A.M.S.Const. Mo. art. 5, § 3, appellate jurisdiction of the appeal is appropriately in this court. *State ex inf. Barrett ex rel. McCann v. Parrish*, 307 Mo. 455, 270 S.W. 688; *State ex rel. Davidson v. Caldwell*, 310 Mo. 397, 276 S.W. 631; *Armantrout v. Bohon*, Mo.App., 157 S.W.2d 530." *Id.* at 196

Based on the *Ponath*, *Falkenhainer* and *Noonan* cases it may be concluded that for the purposes of an election contest a political committeeman holds a public office under the state, or, more specifically, is a county officer. As was pointed out in the *Falkenhainer*

Honorable Ted Salveter

case, the purpose behind the election contest statute is to provide for the honest election of officials whose powers and authority affect the welfare of the community.

However, in the case of State ex rel. Wright v. Carter, 319 S.W.2d 596 (Mo. en banc 1958), the Court refused to find that party committeemen were candidates for a "county office" for the purposes of the Corrupt Practices Act. The Court distinguished the Ponath case on the ground that the Corrupt Practices Act was penal in nature and therefore must be given no broader application than is warranted by its plain and unambiguous terms. Furthermore, there were "incongruities" in the wording of the statutory sections which were "persuasive" that the legislature did not intend them to apply to committeemen. Id. at 599.

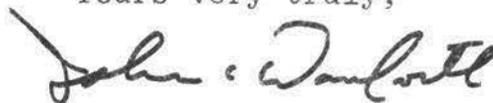
We find no incongruities in the wording of Section 111.171 which are persuasive in that the legislature did not intend Section 111.171 to apply to committeemen. On the contrary, we believe that if party committeemen are "public officers" or "county officers" for one part of the election process, i.e., challenges to their election, they also hold a county office for the purposes of another part of the election process, i.e., qualification to be a judge or clerk. Therefore, we conclude that party committeemen are disqualified under Section 111.171 from serving as election judges and clerks.

CONCLUSION

It is the opinion of this office that committeemen and committeewomen of both political parties are not qualified to serve as election judges and clerks under the terms of Section 111.171, V.A.M.S., 1969-70 Cum. Supp.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, D. Brook Bartlett.

Yours very truly,



JOHN C. DANFORTH
Attorney General