

ELECTIONS: The term "General Election" means the election held in November of even years.

HOSPITAL: Trustees not nominated by primary elections: any qualified person may be placed on ballot.

January 31, 1948

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Mr. Llyn Bradford
Prosecuting Attorney
Phelps County
Rolla, Missouri

Dear Mr. Bradford:

Your letter of January 15, 1948, requesting an opinion of this Department has been received. Omitting caption and signatures, your inquiry is as follows:

"The county clerk of Phelps County, who has certain duties with reference to preparing the ballots for county elections, has requested that I obtain from you an official opinion as to Sec. 15193, Laws of Missouri, 1945, pages 984 and 985, concerning county hospital trustees.

The people of Phelps County at the last general election in 1946, voted \$400,000 in bonds for the construction of a county hospital. The county court appointed five trustees in accordance with Sec. 15193. This statute provides that such trustees shall hold their offices until "the next following general election".

The first question that the county clerk wanted answered was whether this means the general county primary election on the first Tuesday in August or the regular general election on the first Tuesday in November. If the provision means that the trustees are elected at the November general election, then the next question is how are candidates for the position of hospital trustees nominated and how do they get on the general election ballot? If they are not nominated in the primary election, is it necessary that a petition be filed with the required signatures in order to get them on the general election ballot?

It is clear that under the provisions of this statute that at each subsequent general election after the first one, the trustees are selected as any other county officers by nomination and election, but this statute does not seem to make it clear as to how this matter is handled in the first election when these trustees are elected for different terms."

The Statutory provisions referring to the matters contained in your request are Sections 15193 and 15193a of the Missouri Statutes annotated. These provisions are as follows:

"15193. Board of Trustees -- pecuniary interest in purchase of supplies prohibited.

The county court shall appoint five (5) trustees chosen from the citizens at large with reference to their fitness for such office, all residents of the county, not more than three (3) of said trustees to be residents of the city, town or village in which said hospital is to be located, who shall constitute a board of trustees for said public hospital. The said trustees shall hold their offices until the next following general election, when five (5) hospital trustees shall be elected and hold their offices, three (3) for two (2) years and two (2) for four (4) years, and who shall by lot determine their respective terms. At each subsequent general election the offices of the trustees whose terms of office are about to expire shall be filled by the election of hospital trustees who shall each serve for a term of four (4) years. Any vacancy in the board of trustees occasioned by removal, resignation or otherwise shall be reported to the county court and be filled in like manner as original appointments, the appointee to hold office until the next following general election, when such vacancy shall be filled by election of a trustee to serve during the remainder of the term of his predecessor. No trustee shall have a personal pecuniary interest, either directly or indirectly, in the purchase of any supplies for said hospital, unless the same are purchased by competitive bidding."

"15193a. Announcement of candidacy for trustee -- ballots-election.

(1) Each candidate for the office of hospital trustee shall file with the county clerk an announcement of candidacy in writing not later than thirty days before the general election. Such announcement shall indicate whether the individual is a candidate for a full or an unexpired term of a named predecessor. No filing fee shall be required to be paid upon the filing of any such announcement. If announcements of a sufficient number of trustees are not filed, the county court shall appoint such trustees as may be necessary to fill all vacancies on the board which result from the expiration of the term of any trustees and any such appointee shall serve until the next general election when a trustee shall be elected to fill the remainder of the unexpired term.

(2) The county court shall prepare a separate ballot containing the names of all candidates who have announced for trustee as aforesaid which shall not contain any designation of the political party affiliation of any candidate for trustee. Such ballots shall designate the number of trustees to be elected and shall state whether any of such trustees is to be elected for an unexpired term, and shall be in form substantially as follows: * * * * *

Your request contains more than one question and such questions will be considered in the order set out in your letter. Question number 1 is whether the reference to "general election" in section 15193, supra, refers to the County primary election on the first Tuesday in August or the general election held on the first Tuesday in November. It will be noted that the following phrase is used: "The said trustees shall hold their offices until the next following general election * * *." (underlining ours). In Article 8, Section 1 of the Constitution of Missouri for 1945, the time is set for the general election. This provision provides as follows:

"Section 1 -- The general election shall be held on the Tuesday next following the first Monday in November of each even year, unless a different day is set by law, two-thirds of each house assenting."

Section 655, Missouri Statutes annotated page 4899, provides as follows:

"Section 655. The construction of all statutes of this state shall be by the following additional rules unless such construction be plainly repugnant to the intent of the legislature, or of the context of the same statute: First, words and phrases shall be taken in their plain and ordinary or usual sense * * * * *. sixteenth, the term 'general election' refers to the election required to be held on the Tuesday succeeding the first Monday of November, biennially; * * * * *."

From the above constitutional and statutory provisions, we feel that the term "general election," as set out in Section 15193, means the next general election to be held in November of an even year. In construing the language of the Constitution and of statutes, the words used, unless they are technical, are to be understood in their usual and ordinary sense. See State ex rel. Barrett vs. Hutchback, 146 S.W. 40, 241 Mo. 433.

The next question to be considered is the manner in which candidates for the position of hospital trustee are nominated and by what means their names are placed upon the ballot for the general election ballot. Attention should first be directed to the first sentence in Section 15193a, Missouri Statutes annotated, set out above. This sentence reads as follows:

"Each candidate for the office of hospital trustee shall file with the county clerk an announcement of candidacy in writing not later than thirty days before the general election."

Again applying the rules of construction, supra, we construe this sentence to mean that in order for a person to become a candidate as hospital trustee, he must file a declaration of candidacy with the county clerk 30 days before the general election. It will be noted that the statute does not provide that the declaration shall be filed 30 days before the last filing date for the primary election, but only 30 days before the general election. This indicates that prospective candidates for such position are not required to enter a primary and be nominated by any particular political party or group, but only must be able to meet the qualifications of a hospital trustee. At the general election, all persons filing as candidates for trustees are then voted upon and the five receiving the highest number of votes are considered elected, there being five positions to be filled. Section 15193a, supra, further provides that should there not be enough persons filing as candidates to fill the five positions, that after the election, the County Court may then fill the vacancy by appointment, said appointee to act as hospital trustee until the next general election.

The above, we feel, also answers your third question, ie, whether the candidates are required to present a petition with a certain number of names as a prerequisite to having their names placed on the ballot should they not be nominated in the primary election. Obviously, there need not be a petition with signatures nor need there be a nomination by a political party or group.

CONCLUSION

Therefore, it is the opinion of this Department that the term, "general election" referred to in Section 15193, means the general election held in November of the even years as provided by Article 8, Section 1 of the Constitution of Missouri. It is further the opinion of this Department that candidates for the position of hospital trustee provided for in Sections 15193 and 19193a, of the Missouri Statutes annotated are not nominated in a primary election, but any qualified person may declare himself a candidate for such position. This Department

Mr. Llyn Bradford

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further feels that it is not necessary that a petition with the required number of signatures be presented in order that a trustee be nominated and their name placed on the general election ballot as provided for by Sections 15193 and 15193a of Missouri Statutes Annotated.

Respectfully submitted,

JOHN S. PHILLIPS

ASSISTANT ATTORNEY GENERAL,

APPROVED:

J. E. TAYLOR *JET*

ATTORNEY GENERAL.