

COUNTY HOSPITALS: Restriction on number of trustees who may reside in town where hospital is located does not apply to trustees chosen at election.

November 22, 1948



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Honorable Llyn Bradford
Prosecuting Attorney, Phelps County
Rolla, Missouri

Dear Sir:

We have received your request for an opinion of this department, which request is as follows:

"Certain questions have arisen in this county concerning which I desire an official opinion from your department relative to House Bill #24, Laws of Missouri, 1947, pages 323-325, pertaining to county hospitals. Phelps County voted in the general election of 1946 for a bonded indebtedness in the sum of \$400,000.00 to construct and equip a county hospital. The county court in accordance with Section 15193A selected a board of trustees of five members. This section provides no more than three of such trustees shall be from the incorporate city in which the hospital is located. In accordance with Section 15193A a number of candidates ran for the position of trustee, there being seventeen candidates, and of the five highest at the general election, 1948, four were from Rolla in the corporate limits of which the hospital is located. Section 15193" makes no provision with regard to the number that can be elected on this board from the incorporate city in which the hospital is located.

"The question now is whether the four highest being from Rolla can qualify for this position or whether the three highest from Rolla can qualify and the two highest outside of Rolla shall hold the two other positions on the board.

"The county clerk also requested that I ask for an opinion as to when these trustees are qualified and shall enter into the performance of their duties as members of the board of trustees. Section 16193A provides that the five who receive the highest number of votes for the office of trustee shall be declared

elected by the county court which shall issue commissions to the elected trustees. Ordinarily the new officers in the county take their respective offices the first of January. We desire to know whether the new trustees can qualify, receive their commissions and take their positions on the board of trustees at that time."

Section 15193, Mo. R. S. A. (Laws of 1947, Vol. I, p. 323) provides, in part, as follows:

"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.* * * *"

Section 15193a Mo. R.S.A. (Laws of 1947, Vol. I, p. 324) provides the method of electing trustees. Candidates are required to file announcements of candidacy with the county clerk not later than thirty days before the general election. The county court is required to prepare a separate ballot, containing the names of the candidates and stating the number of candidates to be elected. The election officials are required to make return of the vote for trustees to the county court in the same manner as required for return of the vote for candidates for other offices. "The candidates whose names have been placed on the ballot by the county court pursuant to this act and who receive the highest number of votes for the offices of trustee to be filled shall be declared elected by the county court which shall issue commissions to the elected trustees."

As you have pointed out in your letter, section 15193 provides that of the five trustees originally appointed by the county court, not more than three shall be residents of the city, town or village in which the hospital is to be located. However,

nowhere is it provided that, of the persons selected at the next general election as trustees, not more than three may be residents of the city in which the hospital is located. We feel that, in view of the failure of the legislature to make such provisions as to the elected trustees, they must have intended that limitation to apply only to the original board, appointed by the county court. No provision is made in the statute for indicating on the ballots the place of residence of the candidates. Seemingly, had the Legislature intended the limitation to apply to elected trustees, some such provision would have been made in order to enable the voters to avoid voting for persons who might in any event be ineligible because of their residence.

"Statutes imposing qualifications should receive a liberal construction in favor of the right of the people to exercise freedom of choice in the selection of officers. Furthermore, disqualifications provided by the Legislature are construed strictly and will not be extended to cases not clearly within their scope * * *." 46 C.J. Officers, Sec. 32, p. 937. Applying those rules to the present situation, we feel that the five persons who have received the largest number of votes should be declared elected, without regard to their residence.

As to the time when the trustees take office, Section 15194 Mo. R.S.A. (Laws of 1945, p. 985) provides in part: "The trustees shall, within ten days after their appointment or election, qualify by taking the oath of civil officers and organize as a board of hospital trustees * * *." As pointed out above, Section 15193a Mo. R.S.A. (Laws of 1947, Vol. I, p. 324) requires the election official to make return of the vote for trustees to the county court in the same manner as required for return of the vote for candidates for other offices. Section 11615 Mo. R.S.A. provides that the county clerk shall examine and cast up the votes within five days after the close of each election and give to the persons having the highest number of votes certificates of election. In view of the provisions of Section 15194, Mo. R.S.A., the trustees would take office within ten days after the county clerk had cast up the votes and declared the names of the persons who had been elected.

CONCLUSION

Therefore, it is the opinion of this department that the five persons receiving the largest number of votes at the general election as candidates for county hospital trustees under Section 15193, Mo. R.S.A. (Laws of 1947, Vol. I, p. 323) should be declared elected as trustees, without reference to their residence, the

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limitation that only three of the trustees may be residents of the city in which the hospital is located applying only to the original board of trustees selected by the county court. The trustees chosen at the election should take office within ten days after the county clerk has cast up the votes cast at the election and declared the five persons having the largest number of votes elected.

Respectfully submitted,

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APPROVED:

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