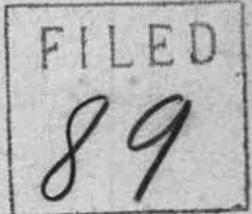


SHERIFF:
ELECTIONS:

For a person to be eligible for the office of sheriff in the State of Mo., pursuant to Sec. 13125, supra, the eligibility of said person must be demonstrable at the time of the commencement of the term of office and of the taking possession of the office. The term "resident taxpayer" means one must have paid or be subject to taxes on either real property, personal property, or intangible personal property and at least a portion of said taxes must go to the local government in the place in which the taxpayer resides.

May 12, 1948



Honorable B. C. Tomlinson
Prosecuting Attorney
Farmington, Missouri

5-12

Dear Mr. Tomlinson:

This will acknowledge receipt of your request for an official opinion, which request reads as follows:

"House Bill 683, Laws of Missouri, 1945, repealed Section 13125 Revised Statutes of Missouri, 1939, and enacted in lieu thereof a new Section 13125 providing qualifications for the office of Sheriff; a portion of said section reads as follows:

"Such person shall be a resident taxpayer and elector of said county, shall have resided in said county for more than one whole year next before filing for said office and shall be a person capable of efficient law enforcement."

"Does this section require a candidate for Sheriff to be a resident taxpayer at the time he files his declaration as a candidate for said office or does it mean that he must be a resident taxpayer at the time he qualifies for said office providing he is elected to same? And does the term 'resident taxpayer' mean one must have paid taxes to the state and county on either real property or tangible personal property?"

"I would appreciate receiving an opinion from you at your earliest opportunity."

Your opinion request relates to a construction of Section 13125, Laws of Missouri, 1945, page 67, Cumulative Pocket Part, R.S.A.

Said Section provides as follows:

"At the general election to be held in 1948, and at each general election held every four years thereafter, the qualified voters in every county in this state shall elect some suitable person sheriff. No person shall be eligible for the office of sheriff who has been convicted of a felony. Such person shall be a resident tax payer and elector of said county, shall have resided in said county for more than one whole year next before filing for said office and shall be a person capable of efficient law enforcement. When any person shall be elected sheriff, the clerk of the county court shall deliver to him a certificate of his election, under the seal of the court, and shall also certify that fact to the clerk of the circuit court, who shall file the certificate in his office; and he shall enter upon the discharge of the duties of his office on the first day of January next succeeding his election."

This statute sets up the qualifications which determine the eligibility of a person for the office of sheriff. In answer to your question as to whether a candidate for sheriff must be a resident taxpayer at the time he files his declaration as a candidate for said office, or must be a resident taxpayer at the time he qualifies for said office, we refer you to the case of State ex inf. Mitchell, Pros. Atty., ex rel. Goodman vs. Heath, 132 S.W. (2d) 1001, 1.c. 1005, where the Court in construing the term "eligible" held as follows:

"It was contended that 'the word "eligible", as used in Constitutions and statutes, concerning elections to office, means the capacity to hold the office at the time of the election, so that the subsequent removal of the disability will not remove the incompetency.' While there are two conflicting lines

of authorities on this question in this country, this court held against this contention and decided that the Constitution and statute did not mean eligible at the time of election, but, instead, meant eligible at the time of commencement of the term and of taking possession of the office. See 46 C.J. 949, sec. 58; 22 R.C.L. 403, Sec. 43; 88 A.L.R. 812 note; 24 R.C.L. 571, Sec. 16. * * * "

Further support of this view is found in Corpus Juris, Volume 46, "Officers", page 938, Section 33; American Jurisprudence, Volume 42, "Public Officers", page 910, Section 39.

As to your question "does the term 'resident taxpayer' mean one must have paid taxes to the state and county on either real property or tangible personal property" we find the definition of resident taxpayer in Words and Phrases, Volume 37, page 309, where a resident taxpayer is construed to be synonymous with "qualified property taxpaying voter". Also, in the case of State ex rel. Higgs vs. Muskogee Iron Works, 103 P. 101, 187 Ok. 419, it was held that those who paid sales tax only, no part of which went to the city, were not "resident taxpayers of said city". In the Heath case, supra, cited, at l.c. 1005, the Missouri Supreme Court in defining a "resident taxpayer" held as follows:

"It is clear that, under the rule of State ex inf. Bellamy ex rel. Harris v. Menengali, supra, respondent was a resident tax payer of the district because he had paid taxes for 1935 (based on June 1, 1934, assessment) and continued to own the same taxable property in the district at all times thereafter. Even though the assessor failed to include him in his assessment of June 1, 1935, this omission did not relieve him of his obligation to pay the 1936 taxes, and these taxes could be collected by following the statutory procedure. * * *".

Previous opinions of this office, copies of which are attached hereto, define a taxpayer as one who pays any tax or is subject to the payment of a tax on property in which

Honorable B. C. Tomlinson -4-

he has an interest. While we have found no statutory or judicial authority that expressly states that a candidate for office must have paid taxes to the state or county, on either real property, personal property, or intangible personal property, we believe it to be evident from the rules cited, supra, that a "resident taxpayer" is a person who pays taxes or is subject to taxes on either real property, personal property or intangible personal property. And, further, that the term "resident" means that at least a portion of the taxes paid upon any of the above enumerated interests must go to the local government of said taxpayer's residence.

CONCLUSION.

It is the opinion of this Department that for a person to be eligible for the office of sheriff in the State of Missouri, pursuant to Section 13125, supra, the eligibility of said person must be demonstrable at the time of the commencement of the term of office and of the taking possession of the office.

Further, that the term "resident taxpayer" means one must have paid or be subject to taxes on either real property, personal property, or intangible personal property and at least a portion of said taxes must go to the local government in the place in which the taxpayer resides.

Respectfully submitted,

APPROVED:

WILLIAM C. BLAIR
Assistant Attorney General

J. E. TAYLOR
Attorney General

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