



JAMES C. KIRKPATRICK
STATE INFORMATION CENTER
(573) 751-4936

ROBIN CARNAHAN
SECRETARY OF STATE
STATE OF MISSOURI

GENERAL COUNSEL
(573) 751-2418

August 17, 2011

Tim Pogue, Mayor
City of Ballwin Government Center
14811 Manchester Road
Ballwin, MO 63011

Dear Mayor Pogue;

The Secretary of State's office received your correspondence requesting guidance on candidate qualifications and candidate filing procedures for candidates for local office. Candidate filing for local office is conducted at the local level and is not under the authority of this office.

The statutes that appear to be relevant to your inquiry are Sections 71.005, 115.346, 115.124, 115.125, and 115.127 RSMo. (section 115.342 does not apply to municipalities and special districts). I have enclosed copies of those statutes for your convenience.

Sections 71.005 and 115.346 provide that no person shall be certified as a candidate for municipal office who is in arrears for municipal taxes or user fees.

Sections 115.124, 115.125 and 115.127, govern the filing of candidates for office in political subdivisions and special districts. These statutes provide that the entity calling the election, whether that is a municipality or special district, is responsible for the oversight of filing of candidates and for certifying a list of those candidates to the county election authority who will conduct the election. Further, the details of the process by which candidate filing is conducted are within the discretion of the political subdivision or special district.

You may consider consulting your attorney regarding the above issues.

Sincerely,

A handwritten signature in cursive script that reads "Leslie M. Winslow".

Leslie M. Winslow
Senior Counsel

Encls.

CC: St. Louis County Board of Election Commissioners

Missouri Revised Statutes

Chapter 71 Provisions Relative to All Cities and Towns Section 71.005

August 28, 2010

Candidates for municipal office, no arrearage for municipal taxes or user fees permitted.

71.005. No person shall be a candidate for municipal office unless such person complies with the provisions of section 115.346 regarding payment of municipal taxes or user fees.

(L. 2002 S.B. 675)

© Copyright



Missouri General Assembly

Missouri Revised Statutes

Chapter 115 Election Authorities and Conduct of Elections Section 115.346

August 28, 2010

Persons in arrears for municipal taxes or fees shall not be candidates for municipal office, when.

115.346. Notwithstanding any other provisions of law to the contrary, no person shall be certified as a candidate for a municipal office, nor shall such person's name appear on the ballot as a candidate for such office, who shall be in arrears for any unpaid city taxes or municipal user fees on the last day to file a declaration of candidacy for the office.

(L. 1999 H.B. 676 § 3)

© Copyright



Missouri General Assembly

Missouri Revised Statutes

Chapter 115 **Election Authorities and Conduct of Elections** **Section 115.124**

August 28, 2010

Nonpartisan election in political subdivision or special district, no election required if number of candidates filing is same as number of positions to be filled--exceptions--random drawing filing procedure followed when election is required.

115.124. 1. Notwithstanding any other law to the contrary, in a nonpartisan election in any political subdivision or special district except for municipal elections, if the notice provided for in subsection 5 of section 115.127 has been published in at least one newspaper of general circulation in the district, and if the number of candidates who have filed for a particular office is equal to the number of positions in that office to be filled by the election, no election shall be held for such office, and the candidates shall assume the responsibilities of their offices at the same time and in the same manner as if they had been elected. Notwithstanding any other provision of law to the contrary, if at any election the number of candidates filing for a particular office exceeds the number of positions to be filled at such election, the election authority shall hold the election as scheduled, even if a sufficient number of candidates withdraw from such contest for that office so that the number of candidates remaining after the filing deadline is equal to the number of positions to be filled.

2. The election authority or political subdivision responsible for the oversight of the filing of candidates in any nonpartisan election in any political subdivision or special district shall clearly designate where candidates shall form a line to effectuate such filings and determine the order of such filings; except that, in the case of candidates who file a declaration of candidacy with the election authority or political subdivision prior to 5:00 p.m. on the first day for filing, the election authority or political subdivision may determine by random drawing the order in which such candidates' names shall appear on the ballot. If a drawing is conducted pursuant to this subsection, it shall be conducted so that each candidate may draw a number at random at the time of filing. If such drawing is conducted, the election authority or political subdivision shall record the number drawn with the candidate's declaration of candidacy. If such drawing is conducted, the names of candidates filing on the first day of filing for each office on each ballot shall be listed in ascending order of the numbers so drawn.

(L. 1990 S.B. 862 § 1, A.L. 1996 S.B. 598, A.L. 1999 H.B. 676, A.L. 2003 S.B. 686, A.L. 2006 S.B. 1014 & 730)

© Copyright



Missouri General Assembly

Missouri Revised Statutes

Chapter 115 **Election Authorities and Conduct of Elections** **Section 115.125**

August 28, 2010

Notice of election, when given--facsimile transmission used when, exceptions--late notification, procedure.

115.125. 1. Not later than 5:00 p.m. on the tenth Tuesday prior to any election, except a special election to decide an election contest, tie vote or an election to elect seven members to serve on a school board of a district pursuant to section 162.241, or a delay in notification pursuant to subsection 2 of this section, or pursuant to the provisions of section 115.399, the officer or agency calling the election shall notify the election authorities responsible for conducting the election. The notice shall be in writing, shall specify the name of the officer or agency calling the election and shall include a certified copy of the legal notice to be published pursuant to subsection 2 of section 115.127. The notice and any other information required by this section may, with the prior notification to the election authority receiving the notice, be accepted by facsimile transmission prior to 5:00 p.m. on the tenth Tuesday prior to the election, provided that the original copy of the notice and a certified copy of the legal notice to be published shall be received in the office of the election authority within three business days from the date of the facsimile transmission. In lieu of a certified copy of the legal notice to be published pursuant to subsection 2 of section 115.127, each notice of a special election to fill a vacancy shall include the name of the office to be filled, the date of the election and the date by which candidates must be selected or filed for the office. Not later than the fourth Tuesday prior to any special election to fill a vacancy called by a political subdivision or special district, the officer or agency calling the election shall certify a sample ballot to the election authorities responsible for conducting the election.

2. Except as provided for in sections 115.247 and 115.359, if there is no additional cost for the printing or reprinting of ballots or if the political subdivision or special district calling for the election agrees to pay any printing or reprinting costs, a political subdivision or special district may, at any time after certification required in subsection 1 of this section, but no later than 5:00 p.m. on the sixth Tuesday before the election, be permitted to make late notification to the election authority pursuant to court order, which, except for good cause shown by the election authority in opposition thereto, shall be freely given upon application by the political subdivision or special district to the circuit court of the area of such subdivision or district. No court shall have the authority to order an individual or issue be placed on the ballot less than six weeks before the date of the election, except as provided in sections 115.361 and 115.379.

(L. 1977 H.B. 101 § 6 010, A.L. 1980 S.B. 734, A.L. 1983 S.B. 234, A.L. 1986 H.B. 1676, A.L. 1995 H.B. 484, et al., A.L. 1996 H.B. 1557 & 1489, A.L. 1997 S.B. 132, A.L. 2003 H.B. 511)

© Copyright



Missouri General Assembly

Missouri Revised Statutes

Chapter 115

Election Authorities and Conduct of Elections

Section 115.127

August 28, 2010

Notice of election, how, when given--striking names or issues from ballot, requirements--declaration of candidacy, officers for political subdivisions or special elections, filing date, when, notice requirements, exceptions for certain home rule cities--candidate withdrawing, ballot reprinting, cost, how paid.

115.127. 1. Except as provided in subsection 4 of this section, upon receipt of notice of a special election to fill a vacancy submitted pursuant to section 115.125, the election authority shall cause legal notice of the special election to be published in a newspaper of general circulation in its jurisdiction. The notice shall include the name of the officer or agency calling the election, the date and time of the election, the name of the office to be filled and the date by which candidates must be selected or filed for the office. Within one week prior to each special election to fill a vacancy held in its jurisdiction, the election authority shall cause legal notice of the election to be published in two newspapers of different political faith and general circulation in the jurisdiction. The legal notice shall include the date and time of the election, the name of the officer or agency calling the election and a sample ballot. If there is only one newspaper of general circulation in the jurisdiction, the notice shall be published in the newspaper within one week prior to the election. If there are two or more newspapers of general circulation in the jurisdiction, but no two of opposite political faith, the notice shall be published in any two of the newspapers within one week prior to the election.

2. Except as provided in subsections 1 and 4 of this section and in sections 115.521, 115.549 and 115.593, the election authority shall cause legal notice of each election held in its jurisdiction to be published. The notice shall be published in two newspapers of different political faith and qualified pursuant to chapter 493 which are published within the bounds of the area holding the election. If there is only one so qualified newspaper, then notice shall be published in only one newspaper. If there is no newspaper published within the bounds of the election area, then the notice shall be published in two qualified newspapers of different political faith serving the area. Notice shall be published twice, the first publication occurring in the second week prior to the election, and the second publication occurring within one week prior to the election. Each such legal notice shall include the date and time of the election, the name of the officer or agency calling the election and a sample ballot; and, unless notice has been given as provided by section 115.129, the second publication of notice of the election shall include the location of polling places. The election authority may provide any additional notice of the election it deems desirable.

3. The election authority shall print the official ballot as the same appears on the sample ballot, and no candidate's name or ballot issue which appears on the sample ballot or official printed ballot shall be stricken or removed from the ballot except on death of a candidate or by court order.

4. In lieu of causing legal notice to be published in accordance with any of the provisions of this chapter, the election authority in jurisdictions which have less than seven hundred fifty registered voters and in which no newspaper qualified pursuant to chapter 493 is published, may cause legal notice to be mailed during the second week prior to the election, by first class mail, to each registered voter at the voter's voting address. All such legal notices shall include the date and time of the election, the location of the polling place, the name of the officer or agency calling the election and a sample ballot.

5. If the opening date for filing a declaration of candidacy for any office in a political subdivision or special

district is not required by law or charter, the opening filing date shall be 8:00 a.m., the sixteenth Tuesday prior to the election, except that for any home rule city with more than four hundred thousand inhabitants and located in more than one county and any political subdivision or special district located in such city, the opening filing date shall be 8:00 a.m., the fifteenth Tuesday prior to the election. If the closing date for filing a declaration of candidacy for any office in a political subdivision or special district is not required by law or charter, the closing filing date shall be 5:00 p.m., the eleventh Tuesday prior to the election. The political subdivision or special district calling an election shall, before the sixteenth Tuesday, or the fifteenth Tuesday for any home rule city with more than four hundred thousand inhabitants and located in more than one county or any political subdivision or special district located in such city, prior to any election at which offices are to be filled, notify the general public of the opening filing date, the office or offices to be filled, the proper place for filing and the closing filing date of the election. Such notification may be accomplished by legal notice published in at least one newspaper of general circulation in the political subdivision or special district.

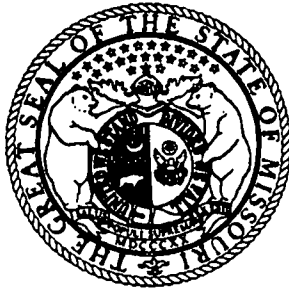
6. Except as provided for in sections 115.247 and 115.359, if there is no additional cost for the printing or reprinting of ballots or if the candidate agrees to pay any printing or reprinting costs, a candidate who has filed for an office or who has been duly nominated for an office may, at any time after the certification required in section 115.125 but no later than 5:00 p.m. on the sixth Tuesday before the election, withdraw as a candidate pursuant to a court order, which, except for good cause shown by the election authority in opposition thereto, shall be freely given upon application by the candidate to the circuit court of the area of such candidate's residence.

(L. 1977 H.B. 101 § 6.015, A.L. 1978 H.B. 971, A.L. 1979 S.B. 275, A.L. 1982 S.B. 526, A.L. 1983 H.B. 713 Revision merged with S.B. 234, A.L. 1988 H.B. 933, et al., A.L. 1989 H.B. 316, A.L. 1993 S.B. 31, A.L. 1996 H.B. 1557 & 1489, A.L. 1997 S.B. 132, A.L. 2002 S.B. 675, A.L. 2003 H.B. 511 merged with S.B. 136)

© Copyright



Missouri General Assembly



MISSOURI SENATE

DIVISION OF RESEARCH

State Capitol, Room B-9, Jefferson City, MO 65101

TEL. (573) 522-7910 FAX (573) 751-4778

H:\CHRIS\Cunningham\Ballwin elections

TO: Senator Cunningham

FROM: Chris Hogerty, Research Analyst

DATE: August 26, 2011

Re: Candidate qualifications

Recently, you contacted me to respond to a constituent's correspondence regarding questions about candidate qualifications for election certification. Please see the discussion below.

QUESTION PRESENTED

Who is authorized to verify candidate qualifications in City of Ballwin elections conducted by the St. Louis County Board of Election Commissioners?

SHORT ANSWER

Missouri statutes do not specifically authorize any party to verify candidate qualifications. Caselaw and Attorney General Opinions seem to indicate that the election authority may withhold names of unqualified candidates but that a city official only authorized to carry out ministerial duties regarding elections does not have the discretion to decide which names are to appear on the ballot in an election conducted by a county election authority. Caselaw does, however, indicate that a City Clerk would be authorized to withhold or complete certification based on whether or not the candidate has paid taxes.

DISCUSSION

Missouri statutes do not specifically authorize any party to verify candidate qualifications. Under Section 115.015, RSMo, the Board of Election Commissioners is the election authority in a city or county having a Board of Election Commissioners. In the instant case, the City of Ballwin sits in St. Louis County which retains the St. Louis County Board of Election Commissioners as the election authority which is required to conduct all public elections under section 115.023, RSMo, for the purposes of Missouri election law. The courts have not construed section 115.023, RSMo, to authorize or require the election authority to verify candidate qualifications, but caselaw and Attorney General

opinions seem to indicate that the election authority may withhold names of unqualified candidates from appearing on the ballot.

The Attorney General has concluded that the county clerk (as the election authority under 115.015, RSMo) "may refuse to place the name of a candidate he believes to be ineligible on the ballot and the question of eligibility will then be determined by the courts if an action is brought to require the clerk to place the candidate's name on the ballot."¹ In reaching this conclusion, the Attorney General's office relied on *Mansur v. Morris* which held that the duty of a county clerk is not purely ministerial.² The Attorney General has also concluded, relying on *State ex rel. Bates v. Remmers*, that the election authority has an obligation to follow the law when making decisions about placing names on ballots and the authority to carry out that obligation by refusing to place a name on the ballot.³ The court found that by placing the name of an ineligible candidate on the ballot, an election authority would "exceed their legal power and jurisdiction".⁴

In examining whether a City Clerk, as election authority established under local ordinance, had the authority to verify candidate qualifications, the Missouri Court of Appeals in the Southern District concluded that the City Clerk "does not have the discretion to decide whose names are placed on the ballot".⁵ In this case the court considered whether a fourth class City Clerk had the authority to investigate a candidate's compliance with a residency requirement to qualify a for city office. The court concluded that the duties of the City Clerk with regard to elections as established in local ordinance were ministerial and the clerk could not use discretion in deciding which names were to appear on the ballot. The court stated:

[W]e come to the conclusion that City Clerk does not have the discretion to decide whose names are placed on the ballot. We do agree though that City Clerk has, among her duties under the ordinance in which she is named the "election authority" for the City of Branson, a ministerial

¹ Missouri Attorney General Opinion No. 87-72.

² *Mansur v. Morris*, 196 S.W.2d 287 (Mo. 1946).

³ Missouri Attorney General Opinion No. 111-88 quoting *State ex rel. Bates v. Remmers*, 30 S.W.2d 609 (Mo. Banc 1930).

⁴ *Id.*

⁵ *Thomas v. Neeley*, 128 S.W.3d 920, 927 (Mo. App. S.D. 2004).

duty to certify the names of candidates. However, where, as here a candidate met his statutory obligations, such as not being in arrears in taxes and timely filing his written, signed, and sworn declaration of candidacy with the City Clerk's office, we find no basis under which City Clerk may make a discretionary decision not to certify the name of that candidate.⁶

It appears that this court is making a distinction between ministerial and discretionary acts in determining when and when not to certify a candidate. It appears that investigating a candidate's residency, concluding from that investigation that the candidate is not a resident, and withholding that name from the ballot would constitute a discretionary act and that certifying a candidate after concluding from documentation that the candidate has or has not paid taxes is a ministerial one. It would follow under this reasoning then, that a City Clerk would not be authorized to decide whether a candidate meets residency requirements or make other discretionary decisions relating to candidate qualifications but would be authorized to withhold or complete certification based on whether or not the candidate has paid taxes as this would constitute a ministerial act. It should be noted that in *State ex rel. Brown v. Shaw*, a City Clerk withheld a candidate's name from the ballot based on the candidate's alleged failure to pay taxes.⁷ Although the court found that the candidate's mortgage company was at fault and thus the candidate was qualified to be placed on the ballot, the authority of the City Clerk in making that initial determination was not challenged.

QUESTION PRESENTED

In the case of determining the qualifications of a candidate for City Alderman, would Section 79.250, RSMo, or Section 115.346 control as to the time by which taxes are required to be paid to qualify for the election?

SHORT ANSWER

Section 115.346 would control.

DISCUSSION

Section 79.250 states in pertinent part:

⁶ *Id.*

⁷ *State ex rel. Brown v. Shaw*, 129 S.W.3d 372 (Mo. Banc 2004).

No person shall be elected or appointed to any office who shall at the time be in arrears for any unpaid city taxes, or forfeiture or defalcation in office.

Section 115.326 states:

Notwithstanding any other provisions of law to the contrary, no person shall be certified as a candidate for a municipal office, nor shall such person's name appear on the ballot as a candidate for such office, who shall be in arrears for any unpaid city taxes or municipal user fees on the last day to file a declaration of candidacy for the office.

The phrase "at the time" in Section 79.250, RSMo, was interpreted in 1997 by the Missouri Eastern District Court of Appeals to mean the time polls close on election day and not the time of filing a declaration of candidacy.⁸ Subsequently, Section 115.326, RSMo, was enacted in 1999 which appears to contradict Section 79.250, RSMo, by requiring that taxes be paid prior to certification of the election. However, the subsequently enacted Section 115.326, RSMo, contains the phrase "[n]otwithstanding any other provision of law to the contrary". This phrase has been interpreted by the Supreme Court to mean that no other law may exist in conflict with a law containing that phrase.⁹ The court stated that the phrase "eliminates conflict rather than creates it because 'no other provision of law can be held in conflict with it.' Indeed, a conflict would exist only if both statutes included a prefatory 'notwithstanding' clause or if neither included such a clause."¹⁰ The court stated that the section in question contain the clause "overrides all provisions that would otherwise be applicable".¹¹ In following the Supreme Courts reasoning, Section 115.326, RSMo, containing the "notwithstanding" clause would override Section 79.250, RSMo, that does not contain the clause.

Please contact me if I may be of further assistance.

⁸ *In re Williams*, 943 S.W.2d 244 (App. E.D. 1997).

⁹ *Kidde America Inc. v. Director of Revenue*, 242 S.W.3d 709 (Mo. 2008).

¹⁰ *Id.* at 712.

¹¹ *Id.*