



STATE OF KANSAS

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CURT T. SCHNEIDER
Attorney General

April 29, 1975

Opinion No. 75-193

The Honorable Arthur W. Douville
State Representative
9600 Woodson
Overland Park, Kansas 66207

Dear Representative Douville:

Section 3 of 1975 Senate Bill 451 prescribes the composition of a county charter commission established thereunder, as follows:

"Members of the charter commission established under the provisions of this act shall be appointed in the following manner: One (1) shall be appointed by each of the county commissioners of the county; one (1) shall be chosen by the central committee of each of the two (2) political parties casting the highest number of votes for nominees for the office of secretary of state at the last preceding primary election; one (1) shall be appointed by the council of mayors of the incorporated cities located in the county; and on [sic] (1) shall be appointed by each member of the legislative delegation from such county. Such members shall be appointed within thirty (30) days after the effective date of this act. No elected governmental official shall serve on the charter commission."
[Emphasis supplied.]

You inquire whether a precinct committeeman or committeewoman, elected pursuant to K.S.A. 25-3801 et seq., is an "elected governmental official" who is ineligible to serve on the charter commission pursuant to the underscored language above.

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The traditional rule is summarized thus at 25 Am.Jur.2d, Elections,
§ 124:

"In most states officers of a political party, such as members of a party executive committee, are not public or governmental officers, even when provided for by statutory law. The duties of a public office are in their nature public. They involve in their performance the exercise of some portion of the sovereign power, whether great or small, in the performance of which all citizens, irrespective of party, are interested, either as members of the entire body politic or of some duly established division of it. Manifestly, membership in a political committee belonging to one party or another does not come within the above description of what constitutes public office, and the fact that the legislature undertakes by statute to regulate the election and conduct of political committees does not make the office a public one. The members thereof continue to be, as before, officers of the political party that elects them, and their duties are confined to matters pertaining to the political party to which they belong and which alone is interested in their proper performance." [Footnotes omitted.]

Clearly, the theory that officers of a political party organization are not public officers is based upon the premise that their duties and responsibilities extend only to members of the political party itself, and do not entail the discharge of duties and responsibilities clearly public or governmental in nature.

Where the powers, duties and responsibilities of party officers are by law extended further, and those officers exercise powers clearly public in nature, they may become, in effect, "public officers."

In State ex rel. McCurdy, 9 Ohio App.2d 280, 224 N.E.2d 353 (1967), the court considered a quo warranto action brought pursuant to a statute authorizing such actions against a "person who . . . unlawfully holds or exercises a public office," in which plaintiff sought

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to oust respondent from the position of chairman of a county Republican central committee. The court stated the rationale underlying the reluctance of courts to interfere with the internal affairs of political parties:

"The courts of the United States have had a long history of not interfering in the internal affairs of political parties. The reasons for this position are simple. Although political parties have certain responsibilities, they are basically voluntary associations made up of persons who act together for various community and party purposes and who are governed in most respects by their own rules and usages. Furthermore, political parties normally provide their own procedures and tribunals for the resolution of their internal affairs."

Concerning the question of "public office," the court began thus:

"Although 'public office' is nowhere defined in either the Revised Code or the Ohio Constitution, the general definitions which have been created and utilized by the courts and textwriters are legion. Despite inconsistent definitions, however, it is the general rule in the United States that party committeemen do not hold a 'public office' -- although the Legislature may, by statute, regulate the election and conduct of political committees. . . . Since a party committeeman is not a 'public officer,' most jurisdictions hold that quo warranto is not available to try the title to a party committeeman's office. . . ." 224 N.E.2d at 355. [Citations omitted.]

Following an earlier decision by the Ohio Supreme Court, however, the court held that the chairmanship of the party central committee was in fact a "public office," and accordingly, that an action in quo warranto would lie to determine title to the office.

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This earlier decision, State ex rel. Hayes v. Jennings, 173 Ohio St. 370, 182 N.E.2d 546 (1962), arose after enactment in 1961 of legislation authorizing central county committees of political parties to fill vacancies in certain public offices held by members of the party. In that case, the question was presented and stated thus by the court:

"Does the General Assembly have the power, under the Constitution, to authorize by statute the county central committee of a political party to appoint a person to fill a vacancy in an elective county office who can then perform the duties of the office until a successor is elected and qualified?"

The court held that such authorization was indeed constitutional, and stated in its own syllabus to the opinion as follows:

"The provisions of Section 205.02, Revised Code, effective October 12, 1961, which authorize the members of the central committee of a political party to fill vacancies occurring, inter alia, in the office of clerks of courts of a county, confer official power upon the members of the central committee, and this annexation of power to this position makes it a public office and is a constitutional grant of power by the General Assembly."

This case is clearly apposite to central party committees in Kansas. K.S.A. 25-3901 et seq. provides a procedure for the filling any "district office," defined to include

"district judge, county commissioner, state representative, state senator and member of the state board of education."

K.S.A. 25-3902 provides in pertinent part thus:

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"(a) Whenever a district convention is provided by law to be held to elect a person to be appointed to fill a vacancy in a district office, the county chairman of the most populous county any part of which is in the district of the political party of which the officer whose office has become vacant was a member, shall call a convention of all committeemen and committeewomen of such party of the precincts in such district for the purpose of electing a person to be appointed by the governor to fill the vacancy."

Subsection (c) directs thus:

"After the convention is organized, it shall proceed to elect a person to be appointed by the governor to fill the vacancy. . . . Each committeeman and committeewoman of the precincts in such districts shall be entitled to vote."

Subsection (d) requires the appointment of the person thus elected to fill the vacancy in question:

"After a person has been elected to be appointed to fill a vacancy in a district office, the chairman or vice chairman of the convention shall execute a certificate, under oath, stating that such person has been duly elected to be appointed to fill such vacancy and shall transmit such certificate to the governor. Thereupon, and not later than seven (7) days after such certificate is received in the office of the governor, the governor or in his absence the lieutenant governor, shall fill such vacancy by appointing to such district office the person so elected. In the event the governor or lieutenant governor fails to appoint any person as required by this subsection (d) after receiving a lawfully executed certificate hereunder, such person shall be deemed to have been so appointed notwithstanding

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such failure. The person so appointed may qualify and enter upon the duties of his district office immediately after his appointment."

This procedure for the filling of vacancies is utilized for other than "district offices" as defined above. For example, K.S.A. 19-504 requires that appointments to fill vacancies in the office of county treasurer shall be "made in the manner provided by law for filling vacancies in the office of member of the house of representatives."

Under these provisions, the effective appointing power to fill vacancies in a number of public offices rests solely with party precinct committeemen and committeewomen. Although the governor is required by law to appoint the person they elect, if he does not do so, the person elected by the convention succeeds to the vacant office by operation of law. The governor has no choice in the matter, and gubernatorial appointment is not necessary to vest title to the office in the person elected by the convention. Indeed, appointment by the governor in this instance is purely ministerial.

In filling vacancies in public offices, clearly, the precinct committee members exercise privileges and responsibilities which extend beyond internal party affairs and management. Indeed, in filling vacancies in certain public offices, the party convention directly elects persons to fill those offices. The power to fill a public office is clearly the exercise of governmental power. It may be argued, of course, that in electing a person to fill a particular vacancy, party precinct committeepersons merely act as surrogates for the electorate at large, and that in that capacity, there are no more to be regarded as public officers than members of the electorate at large. The analogy does not hold, however. An elector is qualified to vote if he or she satisfies the constitutional qualifications for suffrage, and establishes that satisfaction by registration. A precinct committeeperson is qualified to vote for persons to fill vacancies in certain public offices precisely because of the position that person holds, i.e., as a precinct committeeperson. There is thus vested in those committeepersons, by virtue of their election as committeepersons, the exercise of a measure of governmental power, i.e., the power to select and elect persons to fill vacancies in certain public offices.

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A public officer is, by definition, a person who exercises some measure of the power of the state. Precinct committee persons exercise a portion of that power when assembled in district convention to fill vacancies in public office pursuant to K.S.A. 25-3901 et seq.

For purposes of the Kansas general conflict of interest law, K.S.A. 1974 Supp. 75-4301 defines the term "public office" thus in pertinent part:

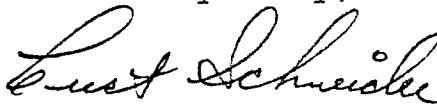
"A position of public trust or agency, created by the Kansas constitution [or] by statute. . . ."

Precinct committee persons clearly hold a position of public trust and agency in exercising the power delegated to them by law to fill vacancies in public office. Apparently mindful of this, political party officers were expressly mentioned in the definition of "public officer:"

"Any person who holds public office in the state of Kansas, except that an attorney-at-law, acting only in his professional capacity, who holds no other public office shall not be construed to be a public officer for the purposes of this act, nor shall any such term include any notary public or any person who holds an office in any political party and who holds no other public office." [Emphasis supplied.]

Section 3 of 1975 Senate Bill 451 excludes any "elected governmental official" from serving on the charter commission authorized thereunder. We cannot but conclude that elected precinct committee men and committeewomen are elected officers who by virtue of their position exercise governmental power in the filling of vacancies in public office, and are thus elected governmental officials who are ineligible for appointment to and service upon the charter commission.

Yours very truly,



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