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ELECTIONS: Circuit Judges — candidates at 1966 primary election.

JUDGES: Circuit — candidates at 1966 primary election.

Circuit judges in multi-judge circuits will be elected at the 1966 general November election for terms of 6, 8, or 10 years. Neither an incumbent judge nor another lawyer may be a candidate for the office of judge at the primary election for more than 1 term. After filing either a certificate of candidacy or nominating petitions as candidate for circuit judge for a given term, one may only file as a candidate for another term after withdrawing for the term for which he previously filed. Time limitations for filing and withdrawing as a candidate are stated.

An elected incumbent circuit judge who is a candidate for re-election to that office in the same circuit is entitled to designation of his office upon the ballot at the 1966 primary and general elections, regardless of the length of term for which he seeks re-election. It is immaterial that the act has been amended to provide for an additional circuit judge in his circuit and that judge will be elected for the first time at that election.

No. 4521

May 3, 1966.

Honorable James M. Hare
Secretary of State
The Capitol
Lansing, Michigan

In your request for opinion, you note that candidates for circuit judge in certain counties will be filing for a 10-year term, 8-year term, and 6-year term. You inquire:

1. May an incumbent file as a candidate for the office for more than one term?
2. May an incumbent file as a candidate for the office for one term and then prior to the last date for filing withdraw and file for another term?
3. What is the withdrawal date for incumbent candidates filing by affidavit of candidacy?

The regular term of office of circuit judge is 6 years as fixed by Section 12, Article VI of the 1963 Constitution, which section concludes:

“In circuits having more than one circuit judge their terms of office shall be arranged by law to provide that not all terms will expire at the same time.”

Section 8 of the Schedule and Temporary Provisions specifies:

“The provisions of Article VI providing that terms of judicial offices shall not all expire at the same time, shall be implemented by law providing that at the next election for such offices judges shall be elected for terms of varying length, none of which shall be shorter than the regular term provided for the office.”

In order that compliance might be had with the various provisions of the 1963 Constitution, the first regular election of circuit judges throughout the

state under that constitution could not be held prior to the 1966 general November election¹ This was recognized by the legislature in implementing the above-quoted constitutional provisions. Sections 416b of the Michigan election law² provides:

“(1) The first general election of judges of the circuit court shall be held in 1966. In that election only, the terms of office of the judges of the circuit court shall be as set forth below, and candidates shall run for a specific term which shall be identified on the ballot.”

[There follows a table specifying the number of judges to be elected for terms of 6, 8, or 10 years respectively according to the number of judges in the particular circuit.]³

“(2) A candidate may file nominating petitions or an affidavit of candidacy for only 1 such office, and such office shall be designated on the nominating petitions or affidavit of candidacy.

“(3) * * *.”

Under the present constitution, any elected incumbent circuit judge may become a candidate in the primary election for the same office by filing an affidavit of candidacy “in the form and manner prescribed by law.”⁴ Such constitutional provision is implemented by Section 413a of the Michigan election law⁵ reading:

“Any elected incumbent circuit court judge may become a candidate in the primary election for the office of which he is an incumbent by filing with the secretary of state an affidavit of candidacy not less than 120 days prior to the date of the primary election.

“The affidavit of candidacy shall contain statements that the affiant is an elected incumbent circuit court judge for the circuit in which election is sought, that he is domiciled within the circuit, that he will not attain the age of 70 by the date of election and a declaration that he is a candidate for election to the office of circuit court judge.”

Section 413 of the Michigan election law authorizes either an elected incumbent or other qualified persons to become a candidate at the primary election for that office by filing of nominating petitions.⁶ The final day upon which an elected incumbent may qualify as a candidate by filing an affidavit of candidacy is fixed by Section 413a, above quoted, as “120 days prior to the date of the primary election.” Based upon the primary date

¹ O.A.G. 1963-64, No. 4175, p. 175.

² Sec. 416b was added to Act 116, P.A. 1954, the Michigan election law by Act 59, P.A. 2d Ex. Sess. of 1963, being M.S.A. 1965 Cum. Supp. § 6.1416(2).

³ See also Sec. 416c of Act 116, as added by Act 393, P.A. 1965, effective October 26, 1965; M.S.A. Cur. Mt. § 6.1416(3), which modifies § 416b to specify the number of judges to be elected for the respective terms in certain circuits of the state.

⁴ Sec. 22, Art. VI of the Constitution.

⁵ Sec. 413a was added to Act 116 by Act 59, P.A. 2d Ex. Sess. of 1963; M.S.A. 1965 Cum. Supp. § 6.1413(1).

⁶ Sec. 413 was last amended by Act 59, P.A. 2d Ex. Sess. of 1963; M.S.A. 1965 Cum. Supp. § 6.1413.

of August 2, the final day for filing of such an affidavit was Monday, April 4.

Provision for withdrawing as a candidate by one who has previously filed either an affidavit of candidacy or nominating petitions is made by Section 414⁷ reading:

“After the filing of a nominating petition or affidavit by or in behalf of a proposed candidate for the office of judge of the circuit court, such candidate shall not be permitted to withdraw unless a written notice of withdrawal is served on the secretary of state or his duly authorized agent not later than 3 days after the last day for filing such petitions, unless the third day falls on a Saturday, Sunday, or legal holiday, in which case the notice of withdrawal may be served on the clerk up to 4 p.m., eastern standard time, on the next secular day.”

Section 413 fixes the seventh Tuesday preceding the primary election as the last day for the filing of nominating petitions. Absent further legislation the nonpartisan primary election in 1966 will be held on Tuesday, August 2.⁸ Based thereon the final day for filing nominating petitions for that primary election will be Tuesday, June 14, and the final day for withdrawal as a candidate after having filed either an affidavit of candidacy or nominating petitions is Friday, June 17.

Turning now to your specific questions:

A candidate for the office of circuit judge for a given term whether an incumbent or not may as provided in different verbiage by Section 416b only be a candidate at the primary election for that office for 1 term. After qualifying therefor by filing either an affidavit of candidacy or nominating petitions, he may file as a candidate for a different term only after withdrawing as a candidate for the term for which he first filed. The final day as fixed by Section 414 for withdrawing as a candidate for a given term after having filed either an affidavit of candidacy or nominating petitions is Friday, June 17.

However, should an incumbent circuit judge after qualifying as a candidate for a given term wish to withdraw and qualify for a different term by the filing of an affidavit of candidacy, the final date for doing so was Monday, April 4, that being the final date for the filing of an affidavit of candidacy. As above noted, before qualifying as a candidate for the office for a different term, he must under those circumstances withdraw as a candidate for the term for which he first qualified.

Should the incumbent after qualifying as a candidate for a given term either by the filing of an affidavit of candidacy or nominating petitions wish to withdraw and qualify for a given term by the filing of nominating petitions, he may do so not later than June 14, that being the final date based upon the primary date of August 2, 1966, for the filing of nominating petitions. Any candidate after filing either an affidavit of candidacy or nominating petitions could, of course, withdraw as a candidate after June

⁷ Sec. 414 was last amended by Act 59, P.A. 2d Ex. Sess. of 1963; M.S.A. 1965 Cum. Supp. § 6.1414.

⁸ Sec. 535, of the Michigan election law, as last amended by Act 57, P.A. 2d Ex. Sess. of 1963; M.S.A. 1965 Cum. Supp. § 6.1535.

14, but not later than June 17, but under those circumstances would not be able to thereafter qualify as a candidate for any term.

This office is in receipt of a related inquiry which will also be answered. By Act 22, P.A. 1966, effective April 20, 1966, certain sections of Act 236, P.A. 1961, the revised judicature act of 1961, were amended to increase the number of circuit judges in certain judicial circuits of the state.

By way of example, the fourth circuit consisting of Jackson County currently has two circuit judges. Act 22 provides for a third judge to be elected at the 1966 general November election and take office on January 1, 1967. Except for that act, two circuit judges would be elected in the fourth circuit at the election, one each for the 6 and 8 year terms.⁹ Now three circuit judges will be elected in that circuit, one each for the 6, 8, and 10 year terms.

Assume that an elected incumbent judge in the fourth circuit after qualifying as a candidate for the office for either the 6 or 8 year term withdraws as such and following the effective date of Act 22 qualified by filing nominating petitions as a candidate for the office for the 10 year term. The question presented is whether that judge would be entitled to the designation of the office upon the ballot at the nonpartisan primary and general elections. The right to the designation is conferred by the constitution:¹⁰

“There shall be printed upon the ballot under the name of each elected incumbent justice or judge who is a candidate for nomination or election to the same office the designation of that office.”

As above noted, the constitution provides that circuit judges shall be elected for 6 year terms, but also requires that in multi-judge circuits the terms be staggered.¹¹ The legislature was mandated to provide for the election at the next election of circuit judges in those circuits for terms of varying lengths.¹² Such provisions were implemented by Section 416a,¹³ 416b,¹⁴ 416c,¹⁵ and 416d,¹⁶ of the Michigan election law. Sections 416b and 416c provide for the election of circuit judges in multi-judge circuits at the 1966 election for terms of 6, 8, and 10 years. Successors to the judges elected at that time will be elected for regular terms of 6 year each, as required by such constitutional provision.¹⁷

The principal change made by the 1963 Constitution with respect to the right of an incumbent circuit judge to the designation of his office

⁹ Sec. 416b, the Michigan election law, as added by Act 59, P.A. 2d Ex. Sess. of 1963; M.S.A. 1965 Cum. Supp. § 6.1416(2).

¹⁰ Sec. 24, Art. VI.

¹¹ Sec. 12, Art. VI.

¹² Sec. 8 of the Schedule and Temporary Provisions.

¹³ Sec. 416a was added by Act 59, P.A. 2d Ex. Sess. of 1963 and amended by Act 393, P.A. 1965; M.S.A. Cur. Mat. § 6.1416(1), pp. 1659-60.

¹⁴ Sec. 416b was added by Act 59, P.A. 2d Ex. Sess. of 1963; M.S.A. 1965 Cum. Supp. § 6.1416(2).

¹⁵ Sec. 416c was added by Act 393, P.A. 1965; M.S.A. Cur. Mat. § 6.1416(3), p. 1660.

¹⁶ Sec. 416d was added by Act 393, P.A. 1965; M.S.A. Cur. Mat. § 6.1416(4), p. 1660.

¹⁷ Sec. 12, Art. VI. See also Sec. 419 of the Michigan election law, as amended by Act 59, P.A. 2d Ex. Sess. of 1963; M.S.A. 1965 Cum. Supp. § 6.1419.

upon the ballot was to limit those entitled thereto to elected incumbents. Thus, the members of the constitutional convention in drafting the constitution and the people in adopting the same obviously intended to differentiate between an elected circuit judge and one who has been appointed but not yet elected.¹⁸ However, there is no basis for concluding that there was any intention of distinguishing between elected incumbent circuit judges who are candidates for re-election in the same circuit solely because one of them is a candidate for election to the office for an 8 year or 10 year term rather than a 6 year term. Thus, in judicial circuits such as the thirtieth consisting of Ingham County which has had three circuit judges since 1945,¹⁹ each of the elected incumbents who are candidates for re-election at the 1966 general November election will be entitled to the designation irrespective of the term for which they seek election.

Nor, does the constitution reflect any basis for concluding that there was any intention to differentiate between elected incumbents both of whom are candidates for election in their respective circuits for the 10 year term. Admittedly, except for Act 22, supra, no circuit judge would be elected for the 10 year term in the fourth circuit. However, that does not change the fact in the example given that the elected incumbent is a candidate for re-election to the office of circuit judge.

Accordingly, he is entitled under the constitution²⁰ to the designation of that office on the ballot. It follows that an elected incumbent circuit judge who is a candidate for re-election to that office in the same circuit will be entitled to the designation of that office upon the ballot regardless of the length of the term for which he seeks election.

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¹⁸ *Burdick v. Secretary of State*, (1964) 373 Mich. 578.

¹⁹ Act 120, P.A. 1945, C.L. 1948 § 602.45, which was superseded by C.L.S. 1961 § 600.531, which section was amended by Act 284, P.A. 1965; M.S.A. 1965 Cum. Supp. § 27A.531.

²⁰ Sec. 24, Art. VI.