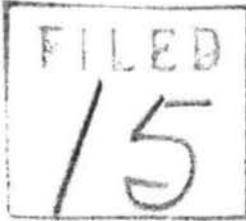


OFFICERS:
KANSAS CITY BOARD OF
ELECTION COMMISSIONERS:

Subsection 4 of Section 117.050, RSMo, requires the Kansas City Board of Election Commissioners to keep its office open during business hours of each week day, excluding Sundays and legal holidays. Board is unauthorized to close its office Saturday afternoon of each week.



January 7, 1957

Honorable David T. Cavanaugh
Member, Board of Election Commissioners
1331 Locust Street
Kansas City 6, Missouri

Dear Mr. Cavanaugh:

This will acknowledge receipt of your recent opinion request dated November 26, 1956, inquiring as to what constitutes business hours with particular reference to Saturdays, within the meaning of Section 117.050, subsection 4, RSMo. 1949.

In reply, we advised you that we were enclosing a copy of our opinion written to Honorable James G. Lauderdale, Probate Judge of Lafayette County on March 15, 1951, which said opinion concluded that county offices must be kept open all day each week except Sunday and legal holidays, and it was believed to fully answer the inquiry. We now are in receipt of your more recent letter acknowledging receipt of said opinion, and note you state that since the opinion refers to county offices, you desire our opinion as to whether or not the Board of Election Commissioners, would be designated as state, county or city offices within the meaning of our former opinion to Judge Lauderdale. Your last opinion request reads:

"As you know, the Board of Election Commissioners of Kansas City, Missouri operates under the provisions of Chapter 117, (Section 117.010 to Section 117.900 inclusive) Election Laws of Missouri. The members of the Board of Election Commissioners are appointed by the Governor pursuant to Sec. 117.050, and the expenses of operation and maintenance of such office of the Election Commissioners is paid one-half by Jackson County, Missouri and one-half by Kansas City, Missouri as provided by Section 117.140.

"By reason of the peculiar situation relative to the appointment of the commissioners and payment of expenses of the Election Board, the question arises as to whether or not the Board of Election Commissioners of Kansas City, Missouri would be designated as a 'county office' within the meaning of the legal opinion heretofore mentioned.

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"We would appreciate it if you would advise us whether the Board of Election Commissioners of Kansas City, Missouri would be designated as a 'county office' within the meaning of the opinion heretofore mentioned, or whether it is a 'state office,' or a 'city office' of Kansas City, Missouri."

It is believed that while the conclusion reached in the enclosed opinion referred only to county offices, that same is not confined to county offices but is equally applicable to state and city offices and would include that of election commissioners.

Inasmuch as you desire an opinion referring only to the election commissioners, we shall be happy to write one for you on the original inquiry. We assume that you are more interested in the original question posed than the inquiry as to the kind of office a commissioner holds.

Said opinion request reads as follows:

"With reference to Section 117.050(4), Election Laws of Missouri, revised for 1955-56, quoted below, this Board respectfully requests an opinion from you in regard to said section.

'Section 117.050..... 4. Such board of commissioners shall maintain an office sufficient for the purpose of such board, which shall always be kept open during business hours of every day, Sundays and legal holidays (other than election days) excepted.'.....

"We would like to have your opinion of what constitutes 'business hours', with particular reference to Saturdays.

"At present, apparently in the discretion of some former board, our office is regularly open from 8:30 a.m. to 4:30 p.m. Monday through Friday, and from 8:30 a.m. to 12 noon on Saturdays.

"We will certainly appreciate your usual prompt attention and cooperation in this matter."

Section 117.050, RSMo. 1949, refers to Boards of Elections Commissioners of cities having 300,000 but not over 700,000 inhabitants and includes Kansas City, Missouri in that class. Subsection 4, thereof, requires the Board to keep an office for the purposes of the Board and provides when it shall be opened for business. Said subsection reads:

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"4. Such board of commissioners shall maintain an office sufficient for the purpose of such board, which shall always be kept open during business hours of every day, Sundays and legal holidays (other than election days) excepted."

The above subsection does not state the time when the office shall be opened nor when it shall close. While it does provide the office shall be kept open during business hours of every day, except those referred to, it fails to define what are business hours within the meaning of the subsection. We are unable to find any Missouri statutes or appellate court decisions defining said terms, therefore, we must look elsewhere for a suitable definition.

While an exact definition was not given which would be applicable to the facts involved in every situation, it is believed, that the one given in the case of *Casaldue v. Diaz et al.* (C.C.A. 1st Circuit) 117 Fed. (2d) 915, would be more nearly applicable than any other we have found thus far. In that case the court construed a certain Federal rule of civil procedure, requiring the clerk's office to be open during business hours of every day except Sundays and legal holidays and at l.c. 916 the Court said:

"It is contended that Rule 41 of the District Court providing that on Saturday the clerk's office shall be kept open until noon is in conflict with Rule 77(c) of the Federal Rules of Civil Procedure. Rule 77(a) and (c) reads:

* * * * *

"(c) Clerk's office and Orders by Clerk. The clerk's office with the clerk or a deputy in attendance shall be open during business hours on all days except Sundays and legal holidays.
* * *

"The term 'business hours' is not defined in the rule. In its natural sense, the term means those hours during which persons in the community generally keep their places open for the transaction of business. The long usage in Puerto Rico, as in many other places, is that business hours on Saturdays do not extend to the afternoon.
* * *"

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It is noted the court found that according to long usage in Puerto Rico and other places, business hours on Saturdays did not include Saturday afternoons and it was the custom that the public did not transact business on Saturday afternoons, and under the Federal rule, business hours also did not include Saturday afternoons.

From your first letter, it appears that the office of the Board is opened regularly from 8:30 a.m. to 4:30 p.m., Monday through Friday and from 8:30 a.m. to 12:00 noon on Saturdays. While there are no statutory provisions as to what hours the Board's office shall be opened and closed each day, we are not advised if the hours mentioned are in accordance with local custom regarding business hours, particularly Saturday afternoon. However, we are advised that the opening and closing hours were apparently established in the discretion of some former Board and that such hours are being observed by the Board at the present time.

In the absence of any showing that it is the local custom for business hours not to include Saturday afternoon, we cannot assume such to be the case and that business hours on Saturday are the same as those on any other day of the week excluding Sundays and all legal holidays. We call your attention to the following sections of the Revised Statutes of Missouri 1949, naming those holidays which have been designated by law.

Sections 10.010, 10.020, 10.030, and 10.050 read as follows:

"Sec. 10.010. The following days, namely: The first day of January, the twenty-second day of February, the thirtieth day of May, the fourth day of July, the first Monday in September, the eleventh day of November, any general primary election day, any general state election day, any thanksgiving day appointed by the President of the United States or by the governor of this state, and the twenty-fifth of December, are hereby declared and established public holidays; and when any of such holidays falls upon Sunday, the Monday next following shall be considered such holiday."

"Sec. 10.020. The twelfth day of October of the year of our Lord 1909, and the twelfth day of October of each year thereafter, is hereby declared a public holiday, to be known as 'Columbus Day,' and the same shall be recognized, classed and treated as other legal holidays under the laws of this state; provided,

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that this section shall not be construed to affect commercial paper, the making or execution of agreements or instruments in writing or interfere with judicial proceedings."

"Sec. 10.030. The thirteenth day of April of the year 1932, and the thirteenth day of April of each year thereafter is hereby declared a public holiday to be known as 'Jefferson Day,' and the same shall be recognized, classed and treated as other legal holidays under the laws of this state; provided, that this section shall not be construed to affect commercial paper, the making or execution of agreements or instruments in writing, or to interfere with judicial proceedings."

"Sec. 10.050. The twelfth day of February of the year 1916, and the twelfth day of February of each year thereafter, is hereby declared a public holiday, to be known as 'Lincoln Day,' and the same shall be recognized, classed and treated as other legal holidays under the laws of this state; provided, that this section shall not be construed to affect commercial paper, the making or execution of agreements or instruments in writing, or to interfere with judicial proceedings."

It is believed that the Kansas City Board of Election Commissioners would be authorized to close its office on each of the holidays named in the foregoing statutes, but since Saturday, or the 6th day of each week, nor any part of it, has not been designated as a legal holiday by the lawmakers said Board should keep its office open all day of each Saturday. It is further believed that "business hours" within the meaning of subsection 4 of Section 117.050, supra, includes Saturday afternoons and that Saturday afternoon is also included within the business hours of each day for transacting business within the Kansas City area.

CONCLUSION

It is, therefore, the opinion of this Department that under the provisions of Section 117.050, subsection 4, RSMo. 1949, the Kansas City Board of Election Commissioners is required to keep their office open during business hours of each day of the week, excluding Sundays and legal holidays, and that the usual business hours of the people located within the Kansas City area include all day Saturday and the Board is unauthorized to close its office each Saturday afternoon.

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The foregoing opinion, which I hereby approve, was prepared by my Assistant, Paul N. Chitwood.

Yours very truly,

JOHN M. DALTON
Attorney General

PHC/mw/bi