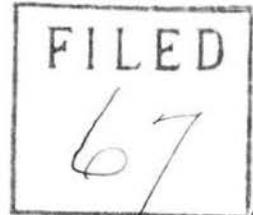


JURIES: Board of Jury Commissioners in counties of 200,000 to 400,000 inhabitants receive no compensation, and have no power to appoint clerks or assistants.

September 11, 1933.



Hon. Julius R. Nolte,
Judge, Division No. 1,

and

Judges of the Circuit Court
of St. Louis County,
Clayton, Missouri

Gentlemen:

This is to acknowledge your letter which reads as follows:

"We direct your attention to act of the General Assembly of Missouri, approved May 1st, 1933, appearing at Laws of Missouri, 1933, page 277.

This act is made applicable to all counties in the State, now containing or which may hereafter contain, according to the last preceding National Census, not less than 200,000 nor more than 400,000 inhabitants.

The purpose of the act is the creation of Jury Commission Boards in counties of the class named. St. Louis County falls under the operation of the act. Section 2 of the act provides that the circuit judges and the judges of courts having jurisdiction in felony cases shall constitute a Board of Jury Commissioners. It further provides that the circuit clerk shall be ex-officio clerk of said Board. Section 3 requires the Board to cause to be made a complete list as near as may be, alphabetically arranged, of all the qualified jurors in the county and their residence; and that in compiling said list said Board of Jury Commissioners and their clerks and assistants may have access to the books of the County Assessor and to any registration

of voters required by law to be made. By section 16 of the act the same is made mandatory.

It is estimated that we now have in St. Louis County between 50,000 and 60,000 persons eligible for jury service and this number is being rapidly increased. It is therefore obvious, that to compile a list, alphabetically arranged, and to duplicate the list on cards to be retained in a wheel or box and to revise the whole, striking out the names of those who have died, moved from the county or become disqualified, and noting changes of residence, annually, as required by sections 14 and 15 of the act, will of necessity involve a stupendous task.

While it is clear that by the provisions of section 2, the Board is afforded the aid of the circuit clerk in discharging the clerical part of the work, yet additional assistance is not afforded except inferentially by the provisions of section 3, and if such additional assistance is authorized by said section, the act nowhere provides for the compensation of such assistants.

The act took effect today and the circuit judges of St. Louis County, after organizing themselves into a Jury Commission Board in obedience to the mandate, find themselves now confronted by this problem: Does the act, by delegating the powers of the Board and requiring the exercise of these powers by an imperative mandate, carry with it the implied authority to procure additional assistants and fix their compensation, so as to be a legal charge upon the general funds of the county, or on the other hand is the right to compensation for the discharge of official duty purely a creature of the Statute and where the statute gives no compensation, none exists?

In this predicament we are submitting the above for your consideration and respectfully request your advice in the matter."

As stated in your letter, an act was approved May 1st, 1933, Laws of Missouri, 1933, page 277 et seq., providing for and designating the manner of selecting petit jurors in counties containing, or hereafter containing, 200,000 inhabitants and less than 400,000 inhabitants according to the last preceding National census. St. Louis County is within the provisions of this act.

In your letter you called attention to how jurors are selected which entails a great deal of clerical work (Sections 3 and 4), thus we will not lengthen this opinion by quoting those provisions that sustain this premise. The act does not provide for clerical help, except Section 2, page 278, which provides in part:

"The circuit clerk of said counties shall be ex-officio clerk of said board of jury commissioners, and his duty shall be to assist the board in the performance of the clerical part of their work, and such clerk shall perform such other duties and services as may be required of him by the board of any member thereof, with respect to the things to be done by the board of jury commissioners, as provided by law."

Section 3, page 278, has this provision:

"* * * and in compiling said list said board of jury commissioners, and their clerks and assistants, may have access to the books of the county assessor and to any registration of voters required by law to be made."

Nowhere in the act is it provided that the board of jury commissioners may appoint clerks or assistants and if it may by inference be said that such power vests in the board, then there is no provision as to their compensation.

If the board has power to appoint clerks and assistants then there is no limitation as to number or compensation. In this connection, we invite your attention to Section 8795, Laws of Missouri, 1933, page 281, which provides, among other things, for the number of employees and fixes their compensation for services to be rendered to the jury commissioners in counties having 400,000 and less than 800,000 inhabitants. If the Legislature intended to provide clerks and assistants for the board of jury commissioners in counties of 200,000 to 400,000 inhabitants, it could and would have done so as it did by Section 8795, supra.

In King v. Riverland Levee Dist., 279 S. W. 195, l. c. 196, the St. Louis Court of Appeals in its opinion said the following:

"It is no longer open to question but that compensation to a public officer is a matter of statute and not of contract, and that compensation exists, if it exists at all, solely as the creating of the law and then is incidental to the office. State ex rel. Evans v. Gordon, 245 Mo. 12 Loc. cit. 27, 149 S. W. 638; Sanderson v. Pike County, 195 Mo. 598, 93 S. W. 942; State ex rel. Troll v. Brown, 146 Mo. 401, 47 S. W. 504. Furthermore, our Supreme Court has cited with approval the statement of the general rule to be found in State ex rel. Wedeking v. McCracken, 60 Mo. App. loc. cit. 656, to the effect that the rendition of services by a public officer is to be deemed gratuitous unless a compensation therefor is provided by statute, and that if by statute compensation is provided for in a particular mode or manner, then the officer is confined to that manner and is entitled to no other or further compensation, or to any different mode of securing the same. State ex rel. Evans v. Gordon, supra."

It is our opinion that the act (Laws of Missouri, 1933, page 277) places an additional duty upon the judges of the circuit court without adding compensation therefor, and that the discharge of this mandatory act being a matter of statute and no compensation provided for, none exists. And further, the act by not providing for clerks and assistants, except circuit clerk, such may not be employed by the board so that their compensation will be a legal charge upon the funds of the county.

We have been very busy with matters before the Supreme Court and for that reason the answer to your inquiry was delayed.

Yours very truly,

James L. HornBostel
Assistant Attorney-General.

APPROVED:

ROY McKITTRICK
Attorney-General.