

ELECTION COMMISSIONER OF ST. LOUIS COUNTY INELEGIBLE FOR APPOINTMENT  
TO OFFICE AUDITORIUM COMMISSION OF CITY OF ST. LOUIS, MO., Under  
SECTION 10535 R. S. MO. 1929.

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10-23  
October 21, 1933



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Honorable Lon Sanders  
117 North Broadway  
St. Louis, Missouri

Dear Sir:

Replying to your letter of October 20, and telegram  
of the 21st, beg to say your letter reads as follows:

"I occupy the position as one of the  
Democratic Election Commissioners, for  
St. Louis County. Upon my return from  
the east, I have been informed that  
Mayor Dickmann has appointed me a member  
of the Auditorium Commission, which  
Commission will have charge of the large  
Auditorium in St. Louis, but without  
salary, or compensation. \* \* \* \* \*

Will you be so good as to give me an opinion  
whether the acceptance of the appointment  
upon the Auditorium Commission would in any  
way embarrass me in continuing as election  
commissioner. I rather feel that this is  
not a political office in the strict sense,  
on account of it being a commission without  
salary, but I want to be sure before accept-  
ing same."

Your telegram of the 21st is as follows:

"Very important to have a quick ruling on  
inquiry as per my letter yesterday whether  
Section One naught five three six election  
laws interfere with my acceptance of  
appointment on Auditorium Commission while  
I am also an election commissioner in the  
county stop Auditorium appointment by  
Mayor Dickmann is in City of St. Louis and  
not in the county and as you know St. Louis  
is not a part of St. Louis County under its  
special charter."

DISTINCTION  
BETWEEN  
OFFICE AND  
EMPLOYMENT.

One criterion distinguishing an office from an employment is the fact that official powers are created and conferred by law. An employment may be created by law but not necessarily so. It is more often created by contract. A public office on the other hand is never conferred by contract but finds its source and limitations in some act or expression of the Governmental power.

"The most important characteristic which distinguishes an office from an employment or contract is that 'the creation and conferring of an office involves a delegation to the individual of some of the sovereign functions of Government to be exercised by him for the benefit of the public - that some portion of the sovereignty of the Government, either Legislative, Executive or Judicial, attaches for the time-being to be exercised for the public benefit.' "

Mechem on Public Offices, Sec. 4.

Our own Supreme Court has said:

"A public office is an agency for the State or more definitely a charge or trust conferred by public authority for a public purpose requiring the performance of duties involving the exercise of some portion of sovereign power."

State ex rel. Zevely v. Hackmann 300 Mo. 59.

Assuming the Auditorium Commission is created by some authority of the City of St. Louis and that the Commission will exercise control and management of the city owned Public Auditorium built by public funds and maintained by the city for the benefit of the public, it is the opinion of this Department the members of said Auditorium Commission will be public officers.

Honorable Lon Sanders

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October 21, 1933

Section 10356 R. S. Mo. 1929, provides as to St. Louis County Election Commissioners as follows:

"They shall hold no other office and shall be ineligible to any elective or appointive office during their term of office\* \* \* \*."

It is the opinion of this Department that the spirit and the letter of the Missouri Statutes forbid your acceptance of the appointment of the St. Louis City Auditorium Commission, so long as you are a member of the St. Louis County Board of Election Board.

Very respectfully,

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ROY McKITTRICK  
Attorney General.

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EDWARD C. CROW  
Assistant Attorney General.

ECC:LG