

ELECTIONS - Notice of selection of election judges may be served by the sheriff.

October 29, 1934

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Honorable Arthur Huff
Clerk of the Iron County Court
Ironton, Missouri

Dear Sir:

This acknowledges receipt of your request for an opinion under date of October 23, 1934, and which request is as follows:

"Our Sheriff believes that he is entitled to a fee for serving notices to the judges of election of their appointment by the County Court.

"The Court has no desire to deprive the Sheriff of any compensation justly due him and have requested me to respectfully request the opinion of your office in the subject as some of the County Courts, we understand, have allowed the sheriffs one dollar for serving these notices of appointment upon each judge of election.

"Our idea is to be fair with the sheriff, but remain within the law. Your opinion on this subject will be much appreciated by the Court and the writer."

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We find from an examination of the statutory law of this state that a county court is a court of Record, Section 1826, R. S. Mo. 1929; that under Section 1844, R. S. Mo. 1929 it has power "to issue all writs which may be necessary in the exercise" of its respective jurisdiction.

Section 10209, R. S. Mo. 1929 provides that with reference to the election, the county court shall select and appoint the number of judges required to hold the election, taking one-half of the judges so appointed from each of the lists submitted by the two leading political parties.

Section 10210, R. S. Mo. 1929 provides that before the judges enter upon the duties of election judge, they shall take an oath which is set out in detail in this section. The law provides when the polls shall be opened and closed, and under Section 10194, R. S. Mo. 1929:

"The judges of each election hereafter to be held, general or municipal, shall open the polls at six o'clock in the morning and continue them open until seven (7) o'clock in the evening, unless the sun shall set after seven (7) o'clock, when the polls shall be kept open until sunset, * "

Under the 1933 Laws, p. 239, it is provided:

"The judges of election shall designate two of their number, not of the same party, whose duty it shall be to have charge of the ballots and to furnish them to the voters in the manner hereinafter provided."

A new section, Section 10211, Laws 1933, p. 239, also provides that the judges shall appoint clerks of election who,

" * before entering on the duties of their appointment, shall take an oath

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or affirmation, to be administered by one of the persons appointed or elected judges of the election, * "

It is apparent from the above and foregoing synopsis of election law that the Legislature, by the use of the terms "select and appoint" found in Section 10209 R. S. Mo. 1929, meant that the county court should notify such persons of the action of the county court in selecting them to be an election judge, although a specific statute on this matter has been omitted by the Legislature. It has been made the duty of the sheriff to attend each court held in his county, Section 1870, R. S. Mo. 1929.

Section 1845, R. S. Mo. 1929, in part, provides:

"Where there is no sheriff or other ministerial officer qualified to act, * the court, or clerk thereof in vacation, may appoint one or more persons to execute its process and perform any other duty of such officer, who shall be entitled to such fees for their services in each cause as are allowed by law to sheriffs in like cases."

It is apparent from this section that any writ of either selection or election of any election judge by the county court is a matter of court record and a proper notice of such action should be served upon the election judge so selected. It was not the intent of the lawmakers that the county court, some county judge or the clerk of a county court should attempt to serve its decisions by mail or some other method. The intention was to have the sheriff in attendance on the county court to serve or carry out any notices or any other matters it had to serve, and for such services the Legislature, in Section 11789, R. S. Mo. 1929,

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provided a fee of fifty cents for serving every notice or rule of court, to be paid to the sheriff, and also mileage at the rate of ten cents per mile for each mile actually travelled in serving such writ or notice.

It is, therefore, the opinion of this office that there is no mandatory provision of law requiring the county clerk to notify election judges as such, but in the event of the failure of the county court to so notify them, it is apparent that the judges so selected, unaware of their appointment as such, will fail to act, and under such circumstances, under the mandates of Section 10191, the voter, when assembled, may appoint the judges. However, if the county court deems it advisable to notify persons selected by the court to act as election judges, then the county court must follow the proper routine of having such notices served by the sheriff, whose compensation, as heretofore pointed out, is fixed by law.

Yours very truly,

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Assistant Attorney General

APPROVED:

ROY McKITTRICK
Attorney General

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