

ELECTIONS \* Duty of County Treasurer in connection with payment of expenses incurred by Board of Election Commissioners in administering Senate Bill No. 22 of the 58th General Assembly.

4-26  
April 25, 1935.

Hon. C. Arthur Anderson,  
Prosecuting Attorney St. Louis County,  
Clayton, Missouri.



Dear Sir:

A request for an opinion has been received from you under date of April 16, 1935, such request being in the following terms:

"I am requested by the Treasurer of St. Louis County, Hon. Maurice Dwyer, to inquire of you for an opinion concerning Senate Bill No. 22, which now has been enacted into a law. He wishes me to propound to you the following questions:

- (1) Does this law make it compulsory that the Treasurer of the County honor any or all warrants drawn on him by the Election Commissioners?
- (2) On what specific fund or funds shall these warrants be drawn?
- (3) In event these warrants will be required to be protested for insufficient funds, as the warrants are in St. Louis County, will the same words be used, as in the case of the regular warrants, for the purpose of protesting?
- (4) In what manner will the Board of Election Commissioners co-operate with the County Court in the issuance of warrants in excess of the anticipated revenue?
- (5) Will the County Court be compelled to give the Treasurer credit for the Election Board warrants honored by the Treasurer?
- (6) Will the County Court or the Election Board audit the accounts of the Election Board war-

Hon. C. Arthur Anderson,  
April 25, 1935.

-2-

rents and cancel such warrants after honored by the Treasurer.

All of the above questions are predicated upon the assumption that the delegation of power to draw warrants is constitutional, of which I am in no way certain. Inasmuch as the Treasurer will perhaps be called upon shortly to honor warrants presented to him by the Election Board, I would appreciate hearing from you at your earliest possible convenience."

The above letter was supplemented by your letter of April 17, 1935, which reads as follows:

"Supplementing my letter to you of April 18th, 1935, relative to request from Maurice Dwyer, Treasurer of St. Louis County, for certain information relative to the warrants to be issued by the Election Board of St. Louis County. An additional question has come before Mr. Dwyer, it is this:

What is the legal wording and form to be used in the aforementioned Election Board warrants?

It is the intention and wish of the Election Board to issue such warrants as are necessary to cover accumulated bills in the next few days, and for this reason an early reply will be greatly appreciated."

The Committee Substitute for Senate Bill No. 22 of the 56th General Assembly of the Legislature of this State, as truly agreed to and finally passed, provides a scheme for the registration of voters and for the holding of elections, including primary elections, in counties containing more than 200,000 inhabitants, within which category St. Louis County falls according to the last decennial census. This Act is lengthy and consists of 33 sections, but an examination of the entire Act in conjunction with the questions asked in your letter, discloses only two sections relating generally to the method in which the Board of Election Commissioners, created by the Act, incurs obligations and arranges for the payment thereof, these being Sections 47 and 48, which provide as follows:

Sec. 47. "Said board of election commissioners are hereby authorized to purchase and provide all necessary ballot boxes, registration books, verification lists, poll books, tally sheets, booths, printed ballots, blanks, stationery and all necessary supplies and equipment for the conduct and holding of registrations and elections,

Hon. C. Arthur Anderson,  
April 25, 1935.

-3-

including primary elections, and for every incidental purpose connected herewith. Such supplies and materials shall be purchased by said board upon public bids for the same from the lowest and best bidder, upon rules and regulations prescribed by said board. Said election commissioners shall also be authorized to require bonds sufficient in sum to insure prompt and faithful compliance with all such contracts and to contract for or rent the polling places and places of registration and outfit and equip the same and secure light, heat, and other conveniences for same. In all cases where the printing of official ballots is awarded to a bidder, the board of election commissioners may require the constant guarding of such ballots by a guard of their own selection, at the expense of the contractor, from the beginning of the printing of the same until their safe delivery at the office of said board of election commissioners. Said board of election commissioners shall audit all accounts and claims for salaries, per diem, supplies, printing, stationery, rent and all other costs of administration of this act, and shall be authorized to draw a warrant, signed by the chairman of said board, and attested by its secretary, upon the county treasurer in payment of the same, to be paid out of the county revenue.

Sec. 48. In all counties of this state affected by this article the board of election commissioners, clerks of the board, judges and clerks of election and registration and all assistants employed by the board of election commissioners shall be paid as follows: in all general and primary elections embracing the whole county or any office not exclusively a city office, the expense specifically incurred for such election shall be paid by the county; in all city elections the expenses specifically incurred for such election shall be paid by the city; in all towns and villages, incorporated, the expenses specifically incurred for any election for officers solely within such towns or villages shall be paid by such towns and villages. The members of said board of election commissioners as such, and as members of the board of registry as herein provided, shall each receive a salary of two thousand dollars per year and the two bonded clerks of the board shall each receive a salary of \$1,600.00 per year, all payable monthly by the county treasurer upon warrants issued by the board of election commissioners and payable out of the county revenue, or any revenue available for that purpose. Assistants and clerks employed by the election commissioners shall receive a salary of \$5.00 per day

Hon. C. Arthur Anderson,  
April 25, 1935.

-4-

for the time actually employed and the same shall be paid monthly, upon a certificate of the board to the county treasurer that the services have been rendered."

These two sections of the 1935 Act are almost identical to two sections in the old Act, R. S. Mo. 1929, Sections 10698 and 10699, so that the previous practice in complying with such sections would create a presumption that as to the unchanged provisions no change was contemplated by the 1935 Act.

Another provision which is important in connection with your questions is that part of Section 46 of the new act which provides as follows:

"All the powers and duties now vested in and required of county clerks and county courts and boards of canvassers pertaining to nominations, primary elections, and elections and election contests in such counties shall hereafter vest in and be required of and be performed by, the board of election commissioners herein provided for in accordance with the provisions hereof."

This provision is identical to a provision in the old law contained in R. S. Mo. 1929, Section 10697, and has been construed by the Supreme Court en banc in the case of State ex rel. Kirchner v. McElhinney, 302 Mo. 564, 253 S.W. 1020 (1924), as follows:

"In express terms it strips county clerks, county courts, and boards of canvassers of every vestige of authority 'pertaining to nominations, elections and election contests.' "

We are aware of no other decisions which might be of assistance, so in the light of the foregoing we shall proceed to rule upon the issues presented in your letter by number.

QUESTION I. The 1935 Act imposes certain definite duties on the Board of Election Commissioners and directs such Board to perform these duties and to issue warrants for the payment of salaries and expenses in connection therewith, and in view of the language of Sections 47 and 48, and particularly Section 46 as construed by the Supreme Court of Missouri, the County Court and the County Clerk would have no voice in this matter. If the Board of Election Commissioners should act unreasonably or improperly, the bonds which the several commissioners must give for the faithful and honest performance of their duties seem to be the protection contemplated by the Act for the County. (Section 45).

Hon. C. Arthur Anderson,  
April 28, 1935.

-5-

QUESTION II. Section 47 of the 1935 Act authorizes the Board of Election Commissioners to draw a warrant on the County Treasurer in payment of the expenses of administration of the Act, the same "to be paid out of the county revenue". Section 48 authorizes the Board of Election Commissioners to draw warrants payable by the County Treasurer "out of the county revenue, or any revenue available for that purpose". We are unable to discover any provision in the County Budget Law (Laws of 1933, page 340, Sections 1-21-) or elsewhere, requiring the creation or setting apart of any separately named fund for the payment of expenses in connection with the administration of Senate Bill No. 22, and it is our opinion that since all warrants drawn by the Board of Election Commissioners would show on their face and by the signatures thereto that they were in payment of expenses of registration and elections in connection with Senate Bill No. 22, if legally issued, it would be unnecessary for such warrants to state any specific fund or funds against which they are drawn.

QUESTION III. The new Act does not prescribe any method of protesting warrants drawn by the Board of Election Commissioners and it is our opinion that where a protest may legally be made, the formula would be the same as that used for protesting any other warrant.

QUESTION IV. The reasoning in the introduction to this opinion and under question I hereof provide the answer for your question IV. A suggested method of co-operation, however, would be to have the Board of Election Commissioners submit to the Budget Officer an estimate of the funds necessary for administering Senate Bill No. 22 during the ensuing year.

QUESTION V. In view of our answer to question I, question V must be answered in the affirmative, because the law could hardly be intended to penalize the County Treasurer for doing something which the law requires him to do.

QUESTION VI. The last sentence of section 47 imposes the duty of auditing accounts and claims in connection with the administration of the Act upon the Board of Election Commissioners. As to cancellation of warrants after they have been honored, the County Treasurer should cancel these warrants in the same manner as he cancels warrants drawn by order of the County Court under the provisions of R. S. No. 1929, Sections 12143-12145. It would seem to us that since the Board of Election Commissioners as to warrants drawn by it stands in approximately the same relation to the County Treasurer under the provisions of Senate Bill No. 22, as does the County Court to the County Treasurer under the provisions of Article 8, Chapter 85, of R. S. No. 1929, that the Board of Election Commissioners should cancel and preserve its warrants in the same manner as the County Court through the County Clerk cancels and preserves its warrants under

Hon. C. Arthur Anderson,  
April 28, 1935.

-6-

Sections 12146 and 12147.

QUESTION VII. No specific form is imposed by the new Act for warrants, but it is our opinion that it would be proper for warrants of the Board of Election Commissioners to be in substantially the form provided for county warrants by R. S. No. 1929, Section 12169, as has been referred to in our answer to Question II above. Of course, the signatories thereto would be the appropriate officials of the Board instead of the officials of the County Court. Even as to County warrants the provisions of Section 12169 would seem merely directory under the ruling in *Young v. Camden County*, 19 No. 309, in which the court at page 311 said:

"The provisions of the act which have been relied upon by the counsel for the county, are directory to the county courts in issuing warrants, and the chief design of those enactments was, to prevent the making of paper by county courts which could be used as a circulating medium, having the appearance of ordinary bank paper."

Very truly yours,

EDWARD H. MILLER  
Assistant Attorney General

APPROVED:

ROY McKITTRICK  
Attorney General