

ELECTIONS: JUDGES AND CLERKS: Counties of 200,000 to 400,000 inhabitants.

3-11

February 21, 1936.



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

Dear Sir:

We wish to acknowledge your letter of February 10th, wherein you state as follows:

"Will you kindly give me an opinion on the following matter:

"In Section 7 of the election law found in the Session Acts of 1935, page 232, there is a provision as follows:

"Said judges and clerks shall be appointed for a term ending 60 days prior to the next general election after the registration or election at which they are appointed to serve, and shall serve as judges and clerks at all special, primary, state, county and general elections included within this act, ..."

"And then reading said section in connection with Section 34, which applies to cities of 10,000 to 100,000, at page 252, the last paragraph provides, that 'All provisions regulating municipal elections in such cities or towns and all penalties provided, etc., shall remain in full force and effect as far as they are not amended or modified by this article.'"

February 21, 1936.

"Will you kindly advise if, in your opinion, the judges and clerks so appointed for State and County elections called by the various municipalities under Section 34."

Your supplemental letter of February 19th is as follows:

"Will you kindly advise supplementary to this letter, if, in your opinion, under the law it is necessary for reappointment of election judges and clerks who are now holding commissions under Central Township, which you know, has now been divided into three townships, namely - Normandy, Clayton and Jefferson townships."

I.

Section 7 of the Session Acts of 1935, page 232, provides the length of the term of judges and clerks appointed to serve in the registration of voters and the holding of elections in all counties of two hundred thousand to four hundred thousand inhabitants, and reads in part as follows:

"Said judges and clerks shall be appointed for a term ending sixty days prior to the next general election after the registration or election at which they are appointed to serve, and shall serve as judges and clerks at all special, primary, state, county and general elections included within this act, * * *".

The above section provides that the judges and clerks shall serve as judges and clerks at all special, primary, state, county and general elections, so it is reasonable to conclude that the Legislature did not intend that they serve in municipal elections for, as stated by the court in the case of State v. Sweaney, 195 S. W. (Mo.) 714, l. c. 716:

"To so hold would be to violate the well-known canon of statutory construction, viz. that the expression of one thing is the exclusion of another."

Section 34, page 252, of the above Session Acts applies to cities of ten thousand to one hundred thousand inhabitants, and provides as follows:

"In all cities and towns in such county having a population of not less than 10,000 nor more than 100,000 inhabitants, the provisions of this article shall apply as regards to permanent registration, new registration, transfers of registration, suspension and cancellation of registration, canvass and revision of the registry, provided that in all special elections, or elections to fill vacancies, the registration books of the last preceding registration corrected by new and transferred registration, suspensions and cancellations may be used. For the purpose of ascertaining the population of any such city or town, the last United States decennial census shall determine the number of its inhabitants, except in the case of such cities or towns where a later official census authorized by state law was taken, when the result of said municipal census shall determine the number of such inhabitants for the purposes of this act. No person shall be permitted to vote in any municipal election held in such cities or towns included in the provisions of this act, whose name is not duly registered in the registration books of the precinct in which he or she resides and the precinct boundaries established by the board of election commissioners of counties included in the provisions of this act shall not be altered by the governing bodies of such municipalities and the polling places shall be the same as those designated by such board of election commissioners wherever possible to do so; provided that the county

board of election commissioners is hereby authorized to appoint a special assistant election commissioner for each precinct in any such city or town where a municipal election is to be held to represent said board on the day of each municipal election, who shall have custody of the registration books furnished by the said board for use at said municipal election, and who shall be assigned a position inside the polling place immediately adjoining the judges of election, and such registration books shall be available for the use of the regularly appointed election officials of said city or town during the voting. Where such cities or towns are subdivided into wards, said special assistant commissioners shall be residents of the ward in which the precinct for which they are appointed is located. Such special assistant election commissioners shall each be allowed the sum of six dollars for each election at which they serve, to be paid out of any available revenue of the city or town in which they are required to serve. Such special assistant commissioners shall be required to obtain from the office of the board of election commissioners on the day preceding each municipal election the registration book of the precinct in which he is to serve on the day of said election and to return said registration book to the office of the election commissioners on the day after the election, for which additional service he shall be allowed the sum of one dollar payable out of the revenue of such municipality. All provisions regulating municipal elections in such cities or towns and all penalties provided for the violations of laws relating to municipal elections shall remain in full force and effect as far as they are not amended and modified by the provisions of this article."

The first underscored portion of the above section indicates clearly that in the counties above referred to having cities and towns with a population of not less than ten thousand nor more than one hundred thousand inhabitants, the provisions

of the Article apply as regards registration, but nothing is said about its application to elections.

Again, there is a provision made for the board of election commissioners to appoint a special assistant election commissioner for each precinct in any city or town where a municipal election is to be held, and these assistants represent the board on the day of each municipal election. This, again, clearly indicates that the judges and clerks of elections appointed by various municipalities are governed by the laws relating to municipal elections, and are not judges and clerks appointed by virtue of this Act; otherwise, it would have been unnecessary to appoint special assistants to represent the board of election commissioners.

The following words lend even stronger weight to the above conclusion:

"Such registration books shall be available for the use of the regularly appointed election officials of said city or town during the voting."

From an examination of the above sections and a reading of the Act, we are of the opinion that the judges and clerks appointed under the Act of 1935 for conducting state and county elections are not ipso facto judges and clerks of elections called by the various municipalities, but such municipal elections are to be conducted by judges and clerks appointed by such municipal authorities and are governed by the laws relating to municipal elections in so far as they are not amended or modified by the provisions of the above Act.

II.

Laws of Missouri, 1929, page 441, provides that townships already established may be subdivided, thus:

"Each county court may divide the county into convenient townships, and as occasion may require erect new townships, subdivide townships already established, organize better township lines, and may, upon the petition in writing, of not less than twenty-five per centum of the legally qualified voters of each township affected, as such vote was cast in the last preceding general election for the office receiving the greatest number of votes in the township

or townships affected, consolidate two or more existing townships into one township, or otherwise reduce the number of townships, or change the boundary lines thereof, as may be deemed advisable."

In the case of State of Missouri ex rel. Frank v. Tegethoff, No. 34679, not yet reported, the Supreme Court of Missouri in banc had the question presented whether Central Township could be subdivided by the county court into three townships, thus depriving the duly elected constable of his position. The court upheld the power of the county court to abolish said township and have same subdivided into three new townships. By virtue of the statutory provision of Section 11757, R. S. Mo. 1929, the constable continued to be the constable of the township in which he had his residence, but new constables were appointed for the other townships.

From the above case, we reach the conclusion that Central Township has been abolished.

Section 3, page 230, of the 1935 Session Acts provides that the board of election commissioners may divide a township into election districts, and states in part that:

"The boards of election commissioners which are hereinafter provided for of such counties in this state shall have power to divide any township in their respective counties into two or more election precincts and to alter such election precincts from time to time as the convenience of the inhabitants may require and the precincts so established shall be numbered consecutively."

Section 5, page 231, of the above Session Acts provides in part that:

"In such counties four judges and two clerks of election and registration shall be appointed by the board of election commissioners for each election precinct in each of said counties as hereinafter provided * * *."

Section 6, page 231, of the above Session Acts sets out the qualifications of judges and clerks and provides, among other things, that:

"They must reside in the precinct for which they are selected to act."

The latter section points out that the judges and clerks "must reside in the precinct for which they are selected to act." Central Township being abolished and three new townships created, it goes without question that the judges and clerks under Central Township are no longer qualified to serve for all three townships.

From the foregoing, we are of the opinion that it is necessary that new judges and clerks be appointed for each of the three new townships, to-wit, Normandy, Clayton and Jefferson, unless one or more of the townships has been divided by the board of election commissioners, in which event a set of judges and clerks should be appointed for each precinct.

We do not have a similar provision in our statutes as in the case of constables, providing that the judges and clerks may continue as judges and clerks in the township in which they have their residence. However, we are of the opinion that such judges and clerks may be eligible for re-appointment as a judge or clerk in the township and precinct in which they reside if they have all the other necessary qualifications.

Respectfully submitted,

OLLIVER W. NOLEN,
Assistant Attorney General.

APPROVED:

JOHN W. HOFFMAN, Jr.,
(Acting) Attorney General.

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