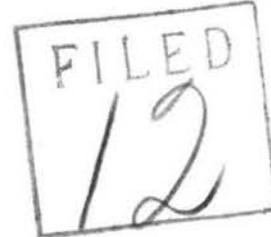


- ELECTIONS: 1. All of the judges at election should select the clerks of election.
2. Judges may not select clerk related to them within fourth degree of consanguinity or affinity.

July 25, 1936

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Honorable Dwight H. Brown
Secretary of State
Jefferson City, Missouri



Dear Mr. Brown:

This will acknowledge receipt of your letter of recent date requesting an opinion of this office upon the following matter:

"I have a complaint which compels me to call upon you for an opinion as to who may appoint clerks of elections. Section 10211, Revised Statutes of Missouri 1929, says the judges shall appoint two clerks.

The complaint is from judges who have been appointed for the coming Primary in which they state that one of the judges, when called to meet to select clerks, said that she had appointed her daughter clerk.

The opinion I want is whether or not one judge may select a clerk or should the majority of the judges appointed select a clerk or clerks. The second question I would be glad for you to advise whether or not an election judge or judges can appoint a son, or daughter, or kinsman, to act as clerk.

Your early reply will be appreciated."

I.

Section 10211 R. S. Missouri 1929 about which you inquired has been repealed and Section 10211 Laws of Missouri 1933, page 239 has been enacted in lieu thereof. Said section reads as follows:

"In all precincts casting less than three hundred votes in the last general election, the judges shall appoint two clerks, and in all precincts casting three hundred or more votes in the last preceding general election, the judges shall appoint four clerks. The clerks, before entering on the duties of their appointment, shall take an oath or affirmation, to be administered by one of the persons appointed or elected judges of the election, that they will faithfully record the names of all the voters; said clerks shall also take the oath above prescribed for judges to be administered at the same time and in the same manner heretofore directed."

It is a fundamental principle of statutory construction, to well known to require any citation of authority, that where a statute is plain and unambiguous there is no room or necessity for construction. The above section is plain and unambiguous and provides that the judges shall appoint the required number of clerks. It is a matter of general practice for Democratic Judges to appoint half of the number of clerks and the Republican Judges to appoint the remaining number of clerks. It is also a matter of common practice for the judges to agree among themselves who shall act as ballot receiving and counting judges and for the receiving and counting judges to select their own clerks. This is however merely a matter of practice which is done by mutual consent of all the judges. The above statute however clearly makes it the duty of all the judges to appoint necessary clerks and not that the individual judges shall select their own clerk.

It is therefore the opinion of this Department that all of the judges of election should select the clerks and that an individual judge does not have the authority to appoint his own clerk without the consent of the other judges.

II.

We will now proceed to answer your second question as to whether or not an election judge or judges can appoint a son or daughter or other relative to act as clerk.

Section 13 of Article XIV of the Constitution of Missouri provides:

"Any public officer or employe of this state or of any political subdivision thereof who shall, by virtue of said office or employment, have the right to name or appoint any person to render service to the State or to any political subdivision thereof, and who shall name or appoint to such service any relative within the fourth degree, either by consanguinity or affinity, shall thereby forfeit his or her office or employment."

Judges of election clearly have the right to appoint clerks of election. There can be no doubt that such clerks render service to the State, the only question involved is whether an election judge is a public officer within the meaning of the above section. In the case of State ex rel. vs. Maroney, 191 Mo.531, l. c. 546, the Court said:

"It is a part of the functions of State government to provide elections for public officers, and to furnish suitable officers for putting in operation such provisions. We have in this cause the relators who have been duly appointed judges and clerks of election in their respective precincts, occupying positions created and conferred by law. Their right and authority to perform the duties incumbent upon them emanates from the legislative branch of the State government. The duration of their terms definitely fixed; their duties plainly marked out, which are of great public importance and clearly for the benefit of the public. The emoluments of the offices held by them, as well as certain privileges and immunities, such as exemption from jury service, are fully provided for; hence it is apparent that in the positions occupied by relators, there are embraced, 'the ideas of tenure, duration, emolument and duties,' which are essential requisites in order to

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constitute the position of judges and clerks of election 'an office,' within the well-understood meaning of that term."

In view of the above it is the opinion of this office that if a judge of election should participate in the appointment of a relative within the fourth degree, either by consanguinity or affinity, as a clerk of election, such appointment would be in violation of Section 13 of Article XIV of the Constitution of Missouri.

Respectfully submitted,

J. E. TAYLOR,
Assistant Attorney General

APPROVED:

JOHN W. HOFFMAN, Jr.,
Assistant Attorney General

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