

BOARD OF ELECTION COMMISSIONERS:
Committee Substitute for
House Bill No. 450.

Present board of election commissioners has no authority to carry out provisions of House Bill No. 450, prior to effective date.

July 23, 1937

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Honorable Fred Bellemere
Chairman, Board of Election Commissioners
Kansas City, Missouri

Dear Sir:

This will acknowledge receipt of your communication requesting an opinion from this office, which reads as follows:

"An opinion is desired as soon as convenient as to whether or not the Board of Election Commissioners of Kansas City shall proceed to set up the necessary blanks filing system etc., to put into operation September sixth the Permanent Registration Law passed by the last Legislature. We were of the opinion that it was our duty to have all preliminaries completed by September sixth in order that the public could enjoy the provisions of the act beginning with that date. However there has been some objection raised to our proceeding in the matter and as we desire to comply with the law we have ceased all action pending your opinion."

The last General Assembly passed Senate Committee Substitute for House Committee Substitute for House Bill No. 450, which act provides a complete scheme for the registration of voters and the conduct of all elections, including primary elections, in all cities which now or hereafter

have a population of more than 300,000 and less than 700,000 inhabitants. Said act was duly approved and signed by the Governor and under the provisions of Section 36 of Article IV of the Constitution, becomes effective ninety days after the adjournment of the Sessions at which it was enacted. Said effective date is September 6, 1937.

Section 3 of said act creates a board of election commissioners, composed of four members whose duty it is to administer the provisions of the act. The members are to be appointed by the Governor within sixty days after the effective date of the act with the advice and consent of the Senate. Since the appointments are to be made at a time when the General Assembly is not in session, those appointed by the Governor will serve, pending the action of the Senate at the next session of the Legislature. State ex Inf. v. Williams, 222, 268.

Section 3, supra, however, provides in part:

"With the appointing and qualifying of the new election commissioners, as herein provided, the respective terms of office of any election commissioners appointed under any previous act applying to such city shall terminate."

In view of the above, it was undoubtedly the intention of the Legislature that the members of the present election commission would serve under the provisions of the Committee Substitute for House Bill No. 450 after its effective date until the appointment and qualifying of new election commissioners under the provisions of the new act.

Section 6 of said act reads:

"Ballot boxes, poll books, etc., to be provided by board.-Such board shall provide all necessary ballot boxes, and all registry records, poll books, tally sheets, ballots, blanks and stationery of every description, with printed headings and certificates, and other equipment necessary and proper for the registry of voters and the conduct of such elections, and for every inci-

dental purpose connected therewith."

Such board as referred to in the above section, whose duty it is to provide all necessary equipment for the registration of voters and the conduct of elections, could only refer to the board appointed by the Governor, or to the present board if it holds over under the provisions of Section 3, supra.

You state, in substance, that since the effective date of the new act providing for permanent registration is effective September 6, 1937, it was the opinion of the present board that it was their duty to have all preliminaries taken care of so the public could immediately enjoy the provisions of the act upon its becoming effective. Perhaps it would be to the best interest of the general public of Kansas City if the machinery was set up in advance so the public could enjoy the benefits of the act at the earliest possible time. However, as no elections are to be held in the near future, the element of time is not so important as it might otherwise have been. Be that as it may, it is not the function of this Department to pass on the advisability of the contemplated actions of the present election commission. We can only pass as we have been called upon to do upon the legality of the action of the present board of election commissioners in purchasing the necessary equipment and setting up a system for the carrying out of the provisions of said act before its effective date, which is as stated above September 6, 1937.

There is a great abundance of authority in this and other states, that a law prior to its effective date, has no force for any purpose, and any act done under its provisions before the arrival of its effective date, is void.

The general rule of law in this regard is stated in 59 C.J. Section 673, pages 1137-1138, as follows:

"The general rule is that a statute speaks from the time it goes into effect and not otherwise, whether that time be the day of its enactment or some future day to which the power enacting the statute has postponed the time of its taking effect. The fixing of a date either by the statute itself or by consti-

tutional provision; when a statute shall be effective, is equivalent to a legislative declaration that the statute shall have no effect until the date designated; and since a statute not yet in effect cannot be considered by the court, the period of time intervening between its passage and its taking effect is not to be counted; but such a statute must be construed as if passed on the day when it took effect. While a statute may have a potential existence, although it will not go into operation until a future time, until the time arrives when it is to take effect and be in force, a statute which has been passed by both houses of the legislature and approved by the executive has no force whatever for any purpose. Before that time no rights may be acquired under it and no one is bound to regulate his conduct according to its terms, and all acts purporting to have been done under it prior to that time are void."

In Keane V. Cushing, 15 Mo. App. 96, the court at l.c. 99, said:

"It is a general rule that, where a constitutional provision prescribes the date at which an act of the legislature shall take effect, until the arrival of that date, it has no force or validity for any purpose whatever; not even for the purpose of imparting notice of its existence. It is said by an authoritative writer on statutory construction: 'A statute which is to become a law at a future date, is a nullity in the meantime. It does not even operate as notice to persons to be affected by it; nor does a repealing clause in it put an end to the law to be repealed.'"

In the case of State v. Bockelman, 240 S. W. 209; the Supreme Court speaking through Judge Graves at l.c. 212, said:

"The real issue in this case is to determine from what exact date such a statute speaks. In our judgment it speaks as of the date it becomes effective and not otherwise. * * * Even notice cannot and will not be taken of such statutes until by their terms they become effective. Price v. Hopkin, supra; Sammis v. Bennett; 32 Fla. loc. cit. 460, 14 South. 90, 22 L.R.A. 48."

The facts in the Kentucky case of State Board of Commissioners v. Coleman, 29 S.W. (2d) 619, are strikingly similar to the facts that herein confront us. The facts were that the General Assembly of Kentucky enacted Senate Bill No. 414 which pertains to the holding and conducting of both primary and general elections in the commonwealth of Kentucky. The act under the provisions of their constitution did not take effect until ninety days after the adjournment of the General Assembly which was March 20, 1930, and the effective date of the act was June 18, 1930. Said act made it the duty of the state election commission to adopt uniform metal ballot boxes to be used in all the election precincts of the commonwealth and to contract for the manufacture and construction of said boxes. The state board before the effective date of the new act entered into a contract for the manufacture of such ballot boxes. The Court of Appeals in Kentucky in passing upon the legality of this contract at l.c. 622, 623, said:

"It will therefore be perceived that the state election commissioners, in entering into that contract before the new act became law, i.e., before June 18, 1930, did so with no authority therefor at the time other than a mere potential one, although the contract created a binding obligation to take and pay for the required number of ballot boxes for each county

by the fiscal court of the county whose county court clerk ordered them. In so entering into the contract, the state board of election commissioners discharged and performed their entire duties under that section of the new act and carried them into complete execution.

It would seem that it would require the citation of no adjudged cases to demonstrate that it would be incompetent for public officers to perform completed duties under a law that had no existence than prospective or potential. Until the time arrives for it to take effect as a controlling mandate of governmental policy, it necessarily could have no more force than if it had never been enacted. In other words, it requires no argument to show that a statute is not a governing law until it does take effect and necessarily nothing provided for in it may legally be done until it does so. Hence we read from the text in 36 Cyc. 1192, subd. C: 'Until the time arrives when it is to take effect and be in force, a statute which has been passed by both houses of the legislature and approved by the executive officer has no force whatever for any purpose, and all acts purporting to have been done under it prior to that time are void.' (Cases cited)

Almost numberless cases could be cited, many of which were decided by this court, to the effect that an act passed by the Legislature is of no force until it takes effect according to the provisions of the prevailing Constitution, or, as in some jurisdictions, is allowed according to its terms if the time is fixed therein."

CONCLUSION

In view of all of the above, it is the opinion of this Department that the present board of election commissioners of Kansas City does not have the authority to pur-

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chase any equipment or to set up any system for the carrying out of the provisions of Senate Committee Substitute for House Committee Substitute for House Bill No. 450, which act provides for permanent registration of voters and the conduct of all elections in Kansas City after it becomes effective September 6, 1937.

It is our further opinion that any contract or act made or done by the present board of election commissioners to carry out the provisions of the new act, prior to its effective date September 6, 1937, would be null and void.

Respectfully submitted,

JET MR

J. E. TAYLOR (Acting)
Attorney General