

SOCIAL SECURITY COMMISSION: Definition of "elective officer"
as it is used in Section 9, C.S.S.B. 125

August 2, 1937.

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Honorable George I. Haworth
Acting Administrator
State Social Security Commission
Jefferson City, Missouri

Dear Sir:

This Department is in receipt of your letter of July 22, 1937, in which you request an opinion as follows:

"In C.S.S.B. 125, Section 9, it is provided that "No elective officer shall be appointed a member of the county social security commission, and upon becoming a candidate for any elective office such member of the county social security commission shall forthwith forfeit his position on said commission."

We would appreciate your advising this Commission the legal definition of 'elective officer'."

You have set out in your request the pertinent part of C.S.S.B. 125, Section 9, which prohibits "elective officers" from being appointed to the County Social Security Commission. An officer, of course, is one who holds an office. In 46 C.J. 921, officers have been classed as private and public. We think it is necessary for a proper disposition of this question to ascertain what the intention of the legislature was when it enacted Section 9 of C.S.S.B. 125. By "elective officer" did they mean public officer or private officer, or both?

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In *Boll v. Condie - Bray Glass & Paint Co.*, 11 S.W. (2d) Mo. Sup. 48, 52, the court in construing a statute, said:

"It is proper, in construing a statute, to consider the reasons prompting the lawmakers to enact the same. In speaking in behalf of this court regarding the construction of a statute, Lamm J., said: 'To that end it is trite doctrine that we should consider * * *, the evil sought to be removed, as well as the remedy provided, and so construe the law to further the remedy and retard the evil. Such is a venerable rule of construction, none the less alive because old.'"

This provision of the act was enacted for the purpose of making the County Social Security Commission a non-political body, and we are borne out in this by the fact that the legislature provided in said act that, no more than two of the members of said county commission shall be of the same political party.

In *State ex rel v. McKay*, 52 S.W. (2d) Mo. App., 229, 230, the court has stated, one of the fundamental rules which is often applied in statutory construction, as follows:

"A statute * * * will not be given a construction which will make it unreasonable or which will result in an absurdity."

To say that the term "elective officer" means both public and private officers, comes within this rule. It is absurd, when we have in mind the purpose of this enactment, to think that the legislature could have intended to include a private officer within the meaning of this term. It would be

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unreasonable and unfair to include, within the prohibition of this clause, those men who hold private offices of employment, because an appointee, to the county commission, who holds a private office of employment would not be a political office holder and his appointment would in no way inject politics, as this term is usually used, into the function of the county commission, and would not defeat the intent of the legislature as it is expressed by this provision.

In State ex rel v. Moneyhan, 212 Mo. App. l.c. 581, the court in stating a rule to be followed to harmonize a statute with reason and properly express what was in fact intended by the legislature, said:

"To accomplish the * * * purpose, words omitted may be read into the statute. Lewis' Sutherland Statutory Construction (2 Ed.) Section 382; State ex rel v. King 44 Mo. 283."

Therefore, with above rules in mind, we think, to clearly express the intention of the legislature the word "public" should be read into this statute so that the prohibition will be placed against "elective public officers".

A public office or officer, has been defined in this state in State ex rel v. Morehead, 256 Mo. l.c. 690, when it is said that:

"A public office is defined to be a special trust or charge created by law * * *. In short, one clothed with the powers, exercising the functions and receiving the emoluments of a public office is a public officer."

In Board of Education v. McChesney, 32 S.W. (2d) 26, 27 (Kentucky) it is said that, "Election to office usually refers to a vote of the people * * *".

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In re: Opinions of the Justices 139 A, l.c. 183 (N.H.), the court in defining elective offices said that they, "are those which are filled by the direct exercise of the franchise of the voters." In Schwab v. Boyle, 160 N.Y.S. l.c. 896; the court said, "The words 'elective officers' * * *, relate to officers selected by the qualified voters of the state, or some political subdivision of it." In State ex rel v. Bowman, 184 Mo. App., l.c. 552, it is said that, "An elective office is one where the officer is chosen by a vote of the qualified voters * * *." In Ayers v. Hutch, 56 N.E. 613 (Mass.) it is said, "The word 'elective'; and the words 'who are elected by the people' signify, it seems to us, officers whom the people are and have been accustomed to elect."

Therefore, it is the opinion of this Department that the term "elective officer" as used in C.S.S.B. 125, Section 9, means a person selected by a direct exercise of the franchise of the qualified voters to fill a public office of a city, state or political subdivision thereof.

Respectfully submitted,

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APPROVED:

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