

ELECTIONS: Board in Kansas City may not pay additional assistants more than that fixed by statute.

December 6, 1937

12-8

FILED
82

Board of Election Commissioners
Kansas City, Missouri

Gentlemen:

This department is in receipt of your request for an opinion which reads as follows:

"The opinion of your office is respectfully requested upon the lawful right and power of the Board of Election Commissioners of Kansas City to pay to its employees compensation for overtime hours of labor performed by such employees at the request or direction of the Board.

"Under the provisions of Section 89 of the Act relating to registration in Kansas City, appearing on pages 339 and 340 of the Laws of Missouri, 1937, the Board may not pay to any of its employees other than its four assistants compensation in excess of \$6.00 per day. With the vast amount of work to be done in providing registration for Kansas City within time and in preparing for the city primary and the city election in 1938, the Board itself has found it necessary to meet frequently at night and on Saturday afternoons and on Sundays. It will be compelled to make similar requirements of some of its employees, and this work will be indispensable to the necessary and proper preparation for and conduct of registration and the city primary and the city election.

Board of Election Commissioners

December 6, 1937

The Board is hopeful that it may have the power to pay for overtime so as to justly compensate faithful employees who are assisting it in this task."

The pertinent part of Section 89, Laws of 1937, page 339, is as follows: "All additional assistants, if any, shall receive not to exceed six dollars per day for the time actually employed". This is the only provision of the election law pertaining to Kansas City which fixes the compensation of the assistants provided for except those on a stipulated monthly salary.

The election law is complete within itself, and the Board of Commissioners is only authorized to do that which the law permits and nothing more.

It is well settled in this state that statutes relating to fees and compensation of public offices must be strictly construed and the officer is only entitled to that which is clearly given by law. *Holman v. City of Macon*, 137 S.W. 16. It is further said that "if by statute, compensation is provided for in a particular mode or manner, then the officer is confined to that manner and is entitled to no other or further compensation". *King v. River Levee District*, 279 S.W. 195, 218 Mo. App. 490.

The compensation fixed by statute for these assistants here is six dollars per day for the time actually employed. In California, the statute provides that election officers cannot be paid more than ten dollars for each election for which they serve. In a case in which the question arose as to whether more than the statutory allowance might be received, it was held that the compensation of such officers cannot exceed the amount expressly limited by statute. *Jones v. Manning*, 169 P. 912.

In Illinois, the statute fixes the compensation of judges and clerks of elections at six dollars per day for their services, and then provides that for the day of election and for each primary, judges and clerks shall be credited with only one days' services each, but in Presidential elections they shall be credited with two days'

Board of Election Commissioners -

December 6, 1937

service. The judges and clerks had attempted to obtain compensation for two extra days spent in posting notices, etc. The court held in *People v. Elliott*, 240 Ill. App. 355 that "the board of supervisors is powerless to allow different fees or commissions from those fixed by statute", and rejected the claim of the judges and clerks.

While the above cases mentioned are not all directly in point, due to the fact that in some instances the compensation concerned is that of public officers, they are in point as to the prohibition against paying fees in excess or other than that fixed by statute. The action of the board in paying these additional assistants more than the amount fixed by statute would clearly contravene this prohibition.

CONCLUSION

Therefore, it is the opinion of this department that the Board of Election Commissioners of Kansas City may not pay their additional assistants an amount in excess of that expressly fixed by statute.

Respectfully submitted,

AUBREY R. HAMMETT, JR.
Assistant Attorney General

APPROVED BY:

J.E. TAYLOR
(Acting) Attorney General

LLB:VAL