

BOARD OF ELECTION COMMISSIONERS - Shall select names of judges and clerks at least 60 days prior to the city election to be held on March 29, 1938

December 8, 1937.

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Board of Election Commissioners  
Court House  
Jackson County  
Kansas City, Missouri

Attention: Mr. Edgar Shook, Member

Gentlemen:

This is to acknowledge receipt of your request for an opinion concerning the construction of subdivision (e) of Section 1 and Section 7 of an Act relating to the registration of voters and for holding of elections in cities of 300,000 to 700,000, Laws of Mo. 1937, at page 294. Your precise question reads:

"Do the above provisions of law oblige the Board of Election Commissioners to select and publish the names of judges and clerks at least sixty days prior to the city election to be held March 29, 1938, or do the provisions oblige the Board of Election Commissioners to select and publish the names of judges and clerks at least sixty days prior to the city primary to be held in Kansas City on March 8, 1938?"

It is provided by Section 7 in part:

"Said board of election commissioners shall at least sixty days prior to the first city or state election after this article becomes a law, and at least sixty days prior to each presidential election thereafter, select and choose four electors as judges of election for each precinct in such city."

Other sections of this statute provide for the appointment of clerks of election in the same manner in which judges are to be appointed.

The above quoted portion of the statute is plain, unambiguous, in its terms, excepting as hereinafter pointed out, and requires that sixty days prior to the first city election it is the duty of the Board of Election Commissioners to select judges of election. The only ambiguity existing in this portion of the statute quoted, if any, is in the construction of the word "election" as has been used, but in our consideration of Subdivision (e) of Section 1, we find that the Legislature has defined what is meant by the use of the word "election" in the following language:

" 'Election' shall mean any general, special, municipal or primary election, unless otherwise specified."

It is elementary in the construction of a statute that words shall be construed in their ordinary and usual sense in order to arrive at the Legislative intent. *Cummins vs. K. C. Public Service Company*, 66 S. W. (2d) 920. Invoking this rule in our consideration of the word "election" in Section 7, supra, can it be said that the Legislature contemplated that judges be appointed sixty days prior to the primary election? We think not. Had the Legislature intended the word "election" to be used in relation to any primary we are of the opinion that such an expression would have been made.

We must, therefore, indulge in the presumption that the Legislature has not used idle or useless verbiage, *State vs. Haid*, 60 S. W. (2d) 41; *Elsas v. Montgomery Elevator Co.*, 50 S. W. (2d) 130, and that when the words "first city or state election" were provided, that the Legislature meant an election where votes are cast for a candidate for a particular office and not a primary election where persons are chosen as candidates by political parties. By analogy, this reasoning is fortified by the expression of the Supreme Court in the case of *State ex rel. Taylor*, 220 Mo. 618, 631, wherein the court quoted approvingly the St. Louis Court of Appeals as follows:

"As said by the St. Louis Court of Appeals in Dooley v. Jackson, 104 Mo. App. 1.c. 30, 'The word "election" frequently occurs in the Constitution of the State. First in section 9, article 2, and article 8 of that instrument is wholly devoted to the subject of elections. But wherever used in the Constitution, it is used in the sense of choosing a person or persons for office by vote, and nowhere in the sense of nominating a candidate for office by a political party. Where the word is used in a certain or restricted sense in the Constitution and the Legislature uses the same word without restriction or qualification in an act in respect to the same subject-matter, the word in the statute should receive the same interpretation that the Constitution has given it'."

Thus, it will be seen in the construction of Section 7, supra, that the Legislature has not in any sense used the word "election" without restriction, but with a qualification, that qualification being a city or a state election. Had such intention been to the contrary, we can assume that it would have been expressed. This expression from the Taylor case has been followed in numerous decisions of our Supreme Court, reference to which would serve no useful purpose in the course of this opinion except to reiterate that which has been expressed.

Numerous cases support the view that the word "election" does not, standing alone, without restriction or qualification, include a primary election. The holdings in these particular cases are based on the premise that an election in its common acceptation means the choosing of a person for an office rather than the nominating of a candidate for an office by a political party. State ex rel. Taylor, supra; State vs. Hartman, 231 S. W. 982, 985 (Mo.); Woodruff v. State, 52 Atl. 294, 296 (N. J.); Kay vs. Schneider, 221 S. W. 880 (Tex.); Walton vs. Olson, 170 N. W. 107 (North Dakota); People vs. Cavanaugh, 44 Pac., 1057 (California).

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We return in our consideration to the definition of the word "election" as defined by the Legislature in Subdivision (e) of Section 1, supra. We are not unmindful in reaching our conclusion that a Legislative construction should receive respectful consideration, but while such is the rule the courts will not be bound thereby. State ex rel. Board of Fund Commissioners vs. Smith, 96 S. W. (2d) 348. Thus, any consideration given by the court to a Legislative construction is in view of arriving at the Legislative intent. It has been held, however, in the case of State ex rel. Cobb vs. Thompson, 5 S. W. (2d) 57, that the Legislative construction will be invoked where the statute is unambiguous or doubtful. With these considerations, it follows that the Legislative construction of the word "election" is not to be considered in determining whether or not the Board of Election Commissioners shall appoint judges and clerks sixty days prior to a city primary election.

#### CONCLUSION

In view of the above, it is the opinion of this department that the Board of Election Commissioners shall select the names of judges and clerks at least sixty days prior to the city election to be held on March 29, 1938.

Yours very truly,

RUSSELL C. STONE  
Assistant Attorney General

APPROVED:

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ROY McKITTRICK  
Attorney General

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