

ELECTIONS: In Jackson County, outside of Kansas City, Board of Election Commissioners should publish notice of election.

June 16, 1938.

Honorable John B. Pew,
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Dear Sir:

This will acknowledge receipt of your letter of May 25th referring to an opinion from this office under date of April 30th concerning the question as to whether the County Clerk of Jackson County or the Jackson County Board of Election Commissioners should make preparation for the coming August, 1938, primary election by publishing the proper newspaper notices, together with a further question as to ballots, not pertinent here; and your query now is, will a notice of the primary mentioned containing the names of the candidates and offices sought and time and place of election, by the county clerk, be a sufficient and legal notice?

In our former opinion we quoted in part the following two sections of the 1929 statutes respecting powers of the election board, as follows:

"Section 10525. The board of election commissioners created hereunder and hereby shall have full and complete power to conduct any and all elections in such county and to receive and certify the returns thereon. * * *"

"Section 10536. * * * Said election commission shall make all necessary rules and regulations not inconsistent with this article in reference to the registration of voters and conduct of elections and shall have charge of and make provisions

June 16, 1938.

for elections, general, special, local, municipal, state and county or any part thereof at any time to certify the returns thereof to the proper officers issuing certificates of election: * * *

It would appear by reason of the broad general powers given the election board under the above sections in making provisions for and conducting an election, that the carrying out of the details of such election, among which details notice as to time and place and names of candidates and offices sought would naturally seem to be one of such details, would require the board to publish the notice and not the county clerk.

However, we note that Section 10512, after providing for the first or initial registration after such section went into force, makes the following provision:

"A general registration shall be made by the board of registry in every year thereafter in which a presidential election occurs and just prior thereto * * *." (Emphasis ours.)

Section 10524 provides for intermediate registration and notice thereof, but has nothing to do with elections.

Hence, it can be seen that the board conducts a general registration only every fourth year by reason of the provisions of Section 10512, supra.

Turning to Section 10531, which specifically relates, by its title, to "Notice of time and registration and election" to be given by the board, it provides as follows:

"It shall be the duty of said board of election commissioners to publish notice in at least two weekly newspapers, of general circulation and of opposite politics, if possible, published in the county, for four weeks prior to each general registration and election, giving the time and place of such registration and election."

It is patent that under the last above section the board is required to give notice, at least so far as registration is concerned, only prior to each general registration, that is to say, every fourth or presidential year, because a general registration is defined by Section 10512, supra. A very confusing and as well serious question is presented by the above wording in Section 10531 relative to notice, to-wit, "general registration and election," as to whether the word "general" qualifies the word "election" the same as it does the word "registration," and hence confines the giving of such notice to presidential elections or general elections as distinguished from primary elections, or whether the word "election" stands alone and means every state-wide election, including a state-wide primary election. We are frank to confess that we have no guide either from companion statutes or court decisions to aid us to any confident conclusion as to what the Legislature intended in the above respect.

However, there may be some basis for concluding that the election meant was the one next following the general registration, or, in other words, the presidential or general election following next after such general registration. But notwithstanding the confusion as to what election or elections the notice should apply, the statute in question is at least specific as to what the notice is required to state, namely, the time and place. The statute does not by its terms, at least, require the notice to state the names of the candidates for office and what office each candidate seeks.

Hence, it appears that the only provision providing for notice or publication of the names of candidates and the office each seeks in a state-wide primary is contained in Section 10262, which makes it the duty of the county clerk to publish such and as well the time and place of the election.

Recurring to the first above mentioned sections, namely, 10525 and 10536, which appear to give to the election board broad and general powers to make provisions for and conduct all manner of elections, we would be of a fixed impression that the Legislature was intending to place the whole category of details of any and all elections, including notice of time, place, candidates and office sought, in the hands of the board, if it were not for the fact that such

Legislature specifically dealt with the question of notices on the part of the board by Section 10531, supra. But having dealt with the subject of notices, as the Legislature did, and leaving manifest doubt as to whether the notice should be published at any other time than at a presidential election, and further limiting the contents of such notice to time and place of whatever election was meant, results in serious doubt as to whether such general power given the board was intended to; and in fact and law does, supersede or supplant the duty of the county clerk to publish for each and every election the names of candidates and offices sought and time and place of such election.

In your letter you say, "It is conceded that the Board should publish notice for the general election in November." You will note by Section 10249 that the county clerk is required, seven days before election, to publish the nominations to office. Even if it is construed that the word "election" as hereinabove alluded to in Section 10531 means or includes the coming November, or so called off year, general election, then should the board adhere to the notice prescribed by the statute which provides for stating only the time and place of election and not the names of the nominees for office and the offices to be filled? Due to the confusion and doubt created by the provisions of the various and several statutes hereabove mentioned and set forth, anyone's conclusion or guess is about as good as another; and until the Legislature sees fit to straighten the matter out, no fixed or definite conclusion can be arrived at with much, if any, confidence.

Hence, our conclusion is that in the interest of precaution the county clerk should publish the notice for the coming primary election in conformity with the provisions of Section 10262, and for the coming November election in conformity with Section 10249; and that the election board should likewise publish such notices both as to time of publication and contents for each such election; and that the Legislature should be called upon at its coming session to clarify the matter so as to obviate any necessity for such duplication of notices in the case of future elections.

Respectfully submitted,

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Assistant Attorney General.

APPROVED:

J. E. TAYLOR,
(Acting) Attorney General.

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