

ELECTIONS: Judges and clerks of election in St. Louis are not employees of the Board of Election Commissioners, and the Board of Election Commissioners cannot, by resolution, designate Judges and Clerks of election as registration officers.

May 28, 1938 5/31

Handwritten:
Board of Election Commissioners
City of St. Louis
208 South Twelfth Boulevard
St. Louis, Missouri.



Gentlemen:

We acknowledge yours of the 19th, which reads as follows:

"Please refer to your opinion of November 4th last relative to appointment of Deputy Election Commissioners to act as registration officers.

"The Board has ordered a general registration to be conducted in each of the seven hundred eighty-three precincts of the City on June 21, 1938, and requests an opinion (a) whether the Board may, by suitable resolution, designate the Judges and Clerks who are now commissioned to serve as such until September 6, 1940, to act as registration officers on June 21, 1938, to take registrations and administer the oath required at the time of such registration, or on any day the Board may order registrations; (b) will it be necessary for the Board to require the Judges and Clerks to subscribe to new oaths and issue new commissions to designate them to act as registration officers; and, (c) are Judges and Clerks considered employees of the Board?

"For your information, there is enclosed copy of Oath of Election Official and the Commission issued."

The Registration Act for the City of St. Louis is found at page 235, Laws Mo. 1937. The Act being lengthy, only pertinent parts will be referred to in this opinion. Section 3 provides in part as follows:

" ** The Board shall appoint a Chief Clerk and they shall also have under their supervision as many employees, evenly divided, as is necessary in the opinion of the Board to accurately perform the work. Said Board shall have the right to employ such assistants from time to time as may be necessary to promptly and correctly perform the duties of the office, under the direction of the Board. ** "

Section 14 provides in part as follows:

"The Chief Clerk and other employees designated by the Board are hereby authorized to act as registration officers, to perform any of the duties and to exercise any of the powers of registration prescribed by this act. ** "

It therefore appears that registration officers are those employees of the Board who are designated by the Board for that purpose. The question then is, - are Judges and Clerks of Election employees of the Board? In 20 C. J. 1241, we find the following meanings of the word "employee":

"In its broad signification the term is used to designate one who is employed; 'one who works for an employer or master;' 'one who works for wages or a salary;' a person hired to work for wages as the employer may direct; a person in constant and continuous service, for however brief a period of time; one whose time and skill are occupied in the business of his employer; any one who renders labor or services to another."

It will be seen that the word "employee" indicates a person who is hired by another person to render services to such other person. Employees of the Board of Election Commissioners are those persons who are hired by the Board to render services to or for the Board. Their duties are set out by the Board and they are under complete supervision of the Board.

Judges and Clerks of Election are not hired by the Board, nor do they render services to the Board. They are public officers provided for by law. The offices of Judge and Clerk of elections are distinct statutory offices. The duties of those offices are set out by statute. Those who occupy these offices do not render service to the Board of Election Commissioners, but they perform certain definite services to the public which are set out by law. It is true the Board of Election Commissioners selects the Judges and Clerks of Election, but such Board does not prescribe their duties. Those duties are defined by statute.

In the case of State ex rel. vs. Maroney, 191 Mo. 531, the court, after discussing what constituted a public office, said (l.c. 546) :

"It is a part of the functions of State government to provide elections for public officers, and to furnish suitable officers for putting in operation such provisions. We have in this cause the relators who have been duly appointed judges and clerks of election in their respective precincts, occupying positions created and conferred by law. Their right and authority to perform the duties incumbent upon them emanates from the legislative branch of the State government. The duration of their terms definitely fixed; their duties plainly marked out, which are of great public importance and clearly for the benefit of the public. The emoluments of the offices held by them, as well as certain privileges and immunities, such as exemption from jury service, are fully provided for; hence it is apparent that in the

May 28, 1938

positions occupied by relators, there are embraced 'the ideas of tenure, duration, emolument and duties,' which are essential requisites in order to constitute the position of judges and clerks of election 'an office,' within the well-understood meaning of that term."

Therefore, we must conclude that Judges and Clerks of Elections are public officers and are not employees of the Board of Election Commissioners. As pointed out above, Section 14 of the Act provides that "the Chief Clerk and other employees designated by the Board are hereby authorized to act as registration officers, to perform any of the duties and to exercise any of the powers of registration prescribed by this act."

CONCLUSION

It is, therefore, the opinion of this office that Judges and Clerks of Election in St. Louis are not employees of the Board of Election Commissioners, and that therefore the Board of Election Commissioners cannot, by resolution, designate the Judges and Clerks of Election as registration officers.

Yours very truly

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Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

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