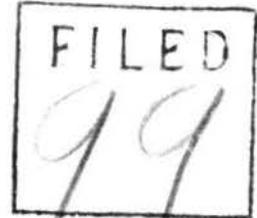


ELECTIONS: Temporary appointees appointed by judge or clerk of elections in St. Louis City to fill vacancies until a judge or clerk is appointed by the Board of Election Commissioners is not entitled to compensation for his services.

September 7, 1938

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



Gentlemen:

This will acknowledge receipt of your inquiry of recent date which reads as follows:

"In the law for the permanent registration of voters, approved June 30, 1937 (Laws of Missouri, 1937) -

Section 5, at Page 241, reads in part ' * * * and they must not hold any office or employment under the United States, the State of Missouri, or under the county or city in which such election is to be held'; and,

Section 38, at Page 259, reads in part 'If any judge or clerk shall not be present upon the expiration of fifteen minutes from the time to open the polls, or he is disqualified or refuses to act, the judge or judges present, and if none are present, then the clerk present, representing the same political party as the person causing the vacancy, shall immediately fill, for the time by the selection of a member of their party, the place of such absent judge or clerk, and notify the Board of the substitution * * *'.

At the Primary Election, August 2, 1938, the Board ruled W.P.A. employees came under the bans of Section 5. This

ruling, together with the usual run of vacancies on election mornings because of illness and for other reasons, developed approximately one hundred fifty vacancies, and from one to six hours elapsed before the complement of judges and clerks were in all the precincts. These vacancies were reported by telephone to the Board, and the message was answered by a return telephone instruction in nearly every case, to the Special Deputy Election Commissioner (a Democrat and a Republican being assigned to each precinct) to serve until relieved, or until the Board's regular substitute appointee arrived. The Board's budget provided for \$36.00 per precinct for this election (four judges and two clerks at \$6.00 each), which amount has been paid to the Board's appointees, six in number.

The Board asks your opinion (1) are these temporary appointees to be viewed in the light of 'party' appointments and not compensated by the Board? (2) is the Board obligated to compensate these temporary appointees; if so, shall the time be calculated on a pro rata day basis and how shall it be calculated, or do these temporary appointees come within the provisions of Section 81?"

In the City of St. Louis, the Board of Election Commissioners appoints judges and clerks of election for definite terms. The law applicable to elections in the City of St. Louis is embodied in an act found in the Laws of 1937, beginning at page 235. Reference hereafter to certain sections refers to sections of said act.

Section 5 of said act provides as follows:

"Said board of election commissioners shall 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. They must be citizens of the United States and entitled to vote in the city at the next general election, and they must be men or women of good repute and character who can speak, read and write the English language, and be skilled in the four fundamental rules of arithmetic, and they must be of good understanding and capable. They must reside or be employed or have a place of business in the ward for which they are selected to act; and they must not hold any office or employment under the United States, the state of Missouri, or under the county or city in which such election is to be held, and they must not be candidates for any office at the next ensuing election. Two clerks of election for each precinct shall be selected within the same time by said board, and shall possess the same qualifications as the judges. Being a notary public shall be no disqualification for judge or clerk. No person shall be appointed nor serve as judge or clerk in any election or registration who has been convicted of an offense punishable by imprisonment in the penitentiary, or who has been confined in any county jail, workhouse, penitentiary or house of correction within five years prior to such appointment. Said judges and clerks shall be appointed for a term ending sixty days prior to the next presidential election after the election at which they were appointed to serve, and shall, during said term, serve as judges and clerks at all special, local, municipal, primary and general elections."

Section 6, after providing the method of selection of judges and clerks, provides as follows:

" * * * * and the persons thus selected shall be appointed and commissioned by the board, if qualified and confirmed by the board."

Section 7 provides for the holding of examinations for those selected as judges and clerks and provides that "No person shall be compelled to serve as judge or clerk for two years after the expiration of his term of service."

It will be seen from the foregoing sections that judges and clerks of election are selected by the Board of Election Commissioners, that they must possess certain specified qualifications and that they serve for definite terms of office. When persons are once qualified and commissioned as judges and clerks, they are available for service at all elections held during a definite term. They thus become regular election officials with definite terms of office.

Section 81 provides for compensation of election officials provided for by the act. Said section reads in part as follows:

" * * * Precinct judges and clerks shall receive as pay six (\$6.00) dollars for each day or part of day while on duty, except pay shall be allowed only for those days mentioned in this Act."

We think it is clear that when the Legislature enacted Section 81 it had in mind providing for regularly selected election officials. It is true that Section 38 provides for the appointment of temporary appointees to fill in for absent judges and clerks until a judge or clerk could be selected by the authority having the power of appointment of judges and clerks, to-wit, the Board of Election Commissioners. Said Section 38 reads in part as follows (underscoring ours):

"If any judge or clerk shall not be present upon the expiration of fifteen minutes from the time to open the polls, or he is disqualified or refuses to act,

the judge or judges present, and if none are present, then the clerk present, representing the same political party as the person causing the vacancy, shall immediately fill, for the time by the selection of a member of their party, the place of such absent judge or clerk, and notify the Board of the substitution. And one of the judges or a clerk, if all the judges be absent, shall administer to such temporary appointee the oath as required of the judge or clerk originally appointed, and blank forms shall be sent out by the Board for such purpose, which oath shall be preserved and returned to the Board and such appointee shall be subject to the same punishment and penalty as any other judge or clerk. The Board upon receiving the notice of the vacancy, shall appoint to fill the same, a judge or clerk of the same political party as the judge or clerk causing the vacancy. Such judge or clerk so appointed shall take the same oath as provided for a regular judge, or a regular clerk, before the Board, or the Chief Clerk, or any assistant of the Board, who are hereby authorized to administer such oaths, or one of the remaining judges and replace the temporary appointee and assume the duties of the position as speedily as possible. Such judge or clerk so appointed shall be subjected to the same punishment and penalties as any other judge or clerk."

It will be noticed that the foregoing section refers to the person selected by the judges or the clerk to fill the vacancy temporarily as the temporary appointee. It does require that the regular oath be administered to such temporary appointee, but at no place does the section refer to the temporary appointee as a judge or clerk. He is merely a temporary appointee to fill the place of such absent judge or clerk. He might properly be referred to

as temporary judge or temporary clerk. The section provides that the Board, upon receiving the notice of the vacancy, shall appoint to fill the same a judge or clerk and that the judge or clerk appointed shall take the oath of a regular judge or clerk. The person appointed by the Board to fill the vacancy is referred to as the judge or clerk so appointed. The Board is the body which has authority under the law to appoint judges and clerks of election.

Neither Section 81 nor any other section of the act makes provision for compensation to the temporary appointees above referred to. Compensation is provided for judges and clerks of election, but not for those who may in an emergency be called upon to fill the place of a judge or clerk for an hour or so. The rule as to compensation for public officers has been laid down in the case of Sanderson v. Pike County, 195 Mo., l.c. 605, in the following language:

"It is well-settled law in this State that the right to compensation for the discharge of official duties is purely a creature of the statute, and that the statute which is claimed to confer that right must be strictly construed. The right of a public officer to compensation is derived from the statute, and he is entitled to none for services he may perform as such officer, unless the statute gives it. (State ex rel. v. Adams, 172 Mo. 1-7; Jackson County v. Stone, 168 Mo. 577; State ex rel. v. Walbridge, 153 Mo. 194; State ex rel. v. Brown, 146 Mo. 401; State ex rel. v. Wofford, 116 Mo. 220; Givens v. Daviess Co., 107 Mo. 603; Williams v. Chariton Co., 85 Mo. 645; Gammon v. Lafayette Co., 76 Mo. 675."

Construing Section 81 strictly, as we are required to do by the foregoing rule, we must conclude that the compensation therein provided is for judges and clerks of election and not for temporary appointees selected by judges or clerks of election to fill temporarily the place left vacant by an absent judge or clerk.

CONCLUSION

It is, therefore, the opinion of this office that temporary appointees selected by judges or the clerk of an election precinct in the City of St. Louis to fill, for the time being, the place of an absent judge or clerk until the Board of Election Commissioners can select a judge or clerk and qualify him to fill such vacancy, is not entitled to compensation for such temporary services.

Respectfully submitted,

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APPROVED By:

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(Acting) Attorney General

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