

ELECTIONS: Voting bonds for court house and jail- duties of officers with respect to furnishing election supplies and compensation therefor.

Exemptions: May claim under both 1160 and 1163 when -

February 25, 1939

Mr. Charles Farrell
Sheriff of Oregon County
P. O. Box 442
Alton, Missouri



Dear Sir:

This will acknowledge receipt of your letter of February 18th, 1939, requesting an opinion as follows:

"Recently we had a Special Election to vote bonds for a new court house and jail. The law provides that the poll books and supplies be delivered to the judges of the election by the Sheriff, his deputy, or by the constables of the townships, and a fair compensation be allowed therefor.

"In this instance they were mailed to some, delivered by some of the constables appointed for that purpose and deliveries made before their filing bonds etc., and the county court has failed or refused to pay any one for this service.

"Another question is this: Is it possible for the head of a family to claim exemptions under section 1160, in part, and then under section 1163., which sets out a value of \$300.00."

1.

On the first question it is necessary first to determine what duties are placed on the various officers with respect to bond elections and their compensation as

allowed by statute.

Article 5, Chapter 15, R. S. Missouri, 1929, pertains to elections to vote bonds for the construction of a court house and jail.

Section 2908 of this article and chapter, provides that such bond elections shall be held and conducted in the same manner as elections for state and county officers.

Under the laws appearing in the Revised Statutes of Missouri, 1929, pertaining to elections for state and county officers:

Section 10195 provides:

"Poll books for each district or election precinct shall be made and furnished to the judges of election therein, in the same manner as hereafter provided in respect to poll books for each township, * * * *"

This statute in the same language goes back to R. S. Missouri, 1855, page 699, section 10. At that time sections 14 and 15 R. S. Missouri, 1855, page 699, provided how the poll books for each township were to be delivered, that was, by the sheriff. Sections 14 and 15 were subsequently repealed and do not appear in any subsequent revision of the statutes, even though for eighty-four years the Legislature has continued to use the language employed in section 10195. However, under rules of statutory construction sections 14 and 15, supra, are as much a part of section 10195, supra, as if copied in the said section.

In State v. Williams, 237 Missouri, 178, l. c. 182, the rule is stated as follows:

"The rule of construction where one statute adopts another, is that, if the

adopting statute specifically designates the title or date of the statute adopted, then the repeal or amendment of the statute thus adopted will not affect the adopting statute. (Culver v. People, 161 Ill. 89)!"

While section 10195 does not specifically refer to the title and date of the enactment of sections 14 and 15, supra, it does refer to the same in such express terms that there can be no mistake as to the acts meant and we think this rule applies here.

Section 10196 makes it the duty of county sheriffs, at county expense, to provide two ballot boxes for each precinct, and leave them with the constable of the township in which the precinct is located, who shall have the same available for use in all elections.

Section 10212 R. S. Missouri, 1929, makes it the duty of the county clerk to send one copy of the election laws as furnished by the secretary of state, along with the poll books for use at any election.

Section 10305 makes it the duty of the county clerk to furnish the ballots to be voted; these to be delivered by the sheriff, a deputy or constable "who shall be allowed a reasonable compensation for his services to be provided by the county court."

Section 10307 R. S. Missouri, 1929, makes it the duty of all officers whose duty it is to designate polling places, to provide voting booths and such supplies which make for the voters' convenience.

Section 10308 R. S. Missouri, 1929, requires the county clerk to supply election judges with large cards having instructions printed thereon for the guidance of the voters. These are to be furnished "at the same time and in the same manner as the printed ballots".

Thus we find that the sheriff is to deliver the pool books, copies of the election laws, and furnish ballot boxes. It is the duty of the sheriff, a deputy or constable to deliver the ballots and instructions for

the election. It is the duty of all officers who are authorized to designate polling places to provide booths and other supplies.

The officers who designate polling places are the county court (Sections 10189, 10190 R. S. Missouri, 1929). If the court fails to do so then it is the sheriff's duty. (See 10191 R. S. Missouri, 1929).

The compensation of the sheriff and constable for the performance of the above duties is: For delivering the ballots and instructions "a reasonable compensation for his services to be provided by the county court". (Section 10305 R. S. Missouri, 1929); for delivering the poll books and copy of election laws we find no statutes providing any compensation; for furnishing ballot boxes, section 10196, supra, provides it shall be done at county expense; and for the county court, or sheriff, in providing booths and other supplies we find no statute allowing compensation. However, section 11777 R. S. Missouri, 1929, allows the constable "for each day or part thereof required in erecting the booths, taking them down, and attending any election in his township, when required to do so by the judges of election, per day\$3.00".

With respect to those duties enjoined on either the county court, sheriff or constable, for which no compensation is allowed, we refer you to the case of State ex rel v. Brown, 146 Mo.401, l. c. 406, where it is said:

"It is well settled that no officer is entitled to fees of any kind unless provided for by statute, and being solely of statutory right, statutes allowing the same must be strictly construed. State ex rel. v. Wofford, 116 Mo. 220; Shed v. Railroad, 67 Mo. 687; Gammon v. Lafayette Co., 76 Mo. 675. In the case last cited it is said: 'The right of a public officer to fees is derived from the statute. He is entitled to no fees for services he may perform, as such officer, unless the statute gives it. When

the statute fails to provide a fee for services he is required to perform as a public officer, he has no claim upon the state for compensation for such services.' Williams v. Chariton Co., 85 Mo. 645."

And, to the case of State ex rel v. Hackman, 265 S. W. 1.c. 535 (Mo.) where it is said:

"Failure to provide a salary or fee for a duty imposed upon an officer by law does not excuse his performance of such duty."

Therefore, on your first question, it is our opinion that for delivering the ballots and instructions, the officer upon whom that duty is imposed is entitled to only such reasonable compensation as the county court may fix; for delivering the poll books, copies of election laws, and in providing voting booths, the officer who has such duty is entitled to no compensation; that ballot boxes are to be furnished at county expense and that the delivery thereof is an essential expense to the furnishing of said ballot boxes to be paid for in such sums as the county court may deem reasonable. That the constable for erecting the voting booths and attending any election in his township when the election judges require his attendance, is entitled to three dollars per day. The officers above concerned are entitled to the compensation mentioned and the county court should allow them the fees if the officer performed the services.

11.

Your second question concerns the interpretation to be placed on sections 1160 and 1163, R. S. Missouri, 1929.

Section 1160 R. S. Missouri, 1929, sets out in eleven parts the property exempt from attachment and execution when owned by the head of a family.

Section 1163, R. S. Missouri, 1929, is as follows:

"Each head of a family, at his election, in lieu of the property mentioned in the first and second subdivision of section 1160 may select and hold, exempt from execution, any other property, real, personal or mixed, or debts and wages, not exceeding in value the amount of three hundred dollars, except ten per cent of any debt, income, salary or wages due such head of a family."

This latter section and its effects on section 1160 has been considered by the court in Mahan v. Scruggs, 29 Missouri, 282, where it is held that the head of a family may claim exemptions under both sections when he does not own, or have, all the property made exempt by the first and second parts of section 1160, R. S. Missouri, 1929. For example: The person might only have five head of hogs, when he is entitled to claim ten as exempt. This deficiency then could be made up by claiming under section 1163, R. S. Missouri, 1929, other property not to exceed \$300.00 in value.

Therefore, upon your second question it is our opinion that the head of a family may claim exemptions under both section 1160 and 1163 R. S. Missouri, 1929, when the claim under section 1163 R. S. Missouri, 1929, is made to make up a deficiency in the articles made exempt by parts one and two of section 1160, R. S. Missouri, 1929.

Respectfully submitted,

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APPROVED:

J. W. BUFFINGTON
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