

CONSTITUTIONAL AMENDMENT: Cost of paying for the sample ballot publication on a proposition should be borne by the State, under Section 10385, R. S. Mo. 1929.

January 16, 1939

Honorable Ellsworth Haymes
Prosecuting Attorney
Webster County
Marshfield, Missouri



Dear Sir:

This Department is in receipt of your letter of January 11th, wherein you make the following inquiry:

"I have an inquiry from the Superintendent of Schools of Rogersville, Missouri upon which he would like an opinion from your office. I am enclosing his letter to me as it states the matter quite plainly.

"Also the County Court of Webster County has asked me to get an opinion from you as to whether the County or the State should properly pay for the publication of the sample ballots of the Propositions to be voted on at an election. The County Court thought that since the State pays for the notice of the Propositions that they should also pay for the sample ballot publication."

From a reading of the attached letter from Mr. George A. Riley, we think it involves a question of whether or not a school district is subject to garnishment. This matter can be determined by the facts as to whether or not the funds garnished have actually become a part of the school district's fund. It would appear so by the fact that the Superintendent collects the same. However,

this appears to be a private rather than an official matter, which does not make it incumbent on this Office to render an opinion. We think the decision of *Cline v. School District of the City of Carthage*, 42 Mo. App. 460, and the recent decision of *Nacy v. LePage*, 111 S. W. (2d) 25, decide the matter.

The second paragraph of your letter relates to the costs for printing sample ballots of propositions to be voted on at an election. If the question involves payment of the printing of sample ballots as in any general election, then we find no provision for the payment of the same.

Section 10301, R. S. Mo. 1929, provides as follows:

"Whenever the secretary of state has duly certified to the clerk of each county court any proposition or question to be submitted to a vote of the people, the clerk of the county court shall prepare and distribute ballots printed in such form as to call for a vote thereon by scratching either (the) word 'yes' or the word 'no,' that is to say, the said proposition or question shall be printed and have the word 'yes' and 'no' printed below or opposite thereto, in bold, legible type, with the words 'scratch one of the above' printed in smaller type, within the sign of a parenthesis, immediately below the said words 'yes' and 'no,' and any such proposition or question shall not be printed in any other form."

The above section does not provide for the printing of any sample ballots.

The last line of your letter seems to indicate that the question relates to the printing of sample ballot publication. Section 10384, R. S. Mo. 1929, relates to the publication of, and posting notices of amendments, and reads as follows:

"All amendments proposed to the Constitution of the State of Missouri by the general assembly shall be published with the laws of the session at which they are proposed, and also in some newspaper, if such there be, in each county in the state for four consecutive weeks next preceding the general election then next ensuing, and two or more copies of such amendments, printed in great primer poster type, shall be posted at each voting place for the information of voters; such copies shall be furnished by the secretary of state to the county clerk of each county, who shall have the same duly posted at each voting place in this county on the morning of the election day on which said amendments are to be voted on."

Section 10385, R. S. Mo. 1929, provides for the manner of payment as follows:

"The secretary of state shall designate in what newspaper in each county said proposed amendments shall be published, and the claim due the publisher of such newspaper for such publication and the costs of publishing the copies of the amendments hereinbefore provided for shall be certified by the secretary of state to the

Jan. 16, 1939

state auditor, who shall draw his warrant on the state treasurer therefor, payable out of any money in the treasury not otherwise appropriated."

Noting that Section 10385, supra, uses the expression, "for such publication and the costs of publishing the copies of the amendments hereinbefore provided for," we are of the opinion that it refers to all matters which are to be carried out by the respective counties and county clerks, and if the sample ballot publication referred to in your letter comes properly within the purview of Section 10384, supra, the expense for the same should be paid by the State.

Respectfully submitted

OLLIVER W. NOLEN
Assistant Attorney-General

APPROVED:

J. W. Buffington
(Acting) Attorney-General

OWN:EG