

**ELECTIONS:** County Clerk prepares and delivers **ballots** used in primary and general elections.  
County Clerk publishes notices of calling of primary election.  
County Clerk publishes notice showing the nominees for offices.  
Board of Election Commissioners publishes notice of general election.

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Mr. John H. Hardin, Chairman  
Board of Election Commissioners  
Court House  
Independence, Missouri

Dear Sir:

We are in receipt of your request for an opinion dated April 5, 1940, which reads as follows:

"Under date of March 30, 1938, your office gave to the Jackson County Board of Election Commissioners an opinion in which you stated that said Board of Election Commissioners, outside of Kansas City, Missouri, should publish notices of Elections and provide ballots and all other necessary supplies for Elections. This opinion was given by Mr. Harry H. Kay of your office.

"In a Conference with the County Clerk of this County today in regard to the necessary preliminaries for the Primary Election, the Clerk stated that he desired a more recent opinion on the point of printing ballots and supplies for said Election, and our understanding is that he is writing you today for such an opinion. If a new opinion is prepared and given

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we should be pleased to have you mail a copy to us at our office in Independence.

"We should also appreciate it if you would give us your opinion as to just where the duties of the County Clerk cease, and the duties of the Jackson County Election Board begin, in the matter of arranging for the Primary Election, giving notices thereof and preparing ballots and supplies for same. Under Article 5, of Chapter 61, covering Primary Elections, by Section 10256, the County Clerk publishes a notice of the offices to be filled. We understand from the following sections that all filings for county offices should then be made with the County Clerk, that he should publish the names of the candidates (Section 10262), and distribute sample ballots to the candidates as provided by Section 10265. Would the County Clerk carry on under this Article until ten days prior to the Primary Election (when the time for withdrawal of names ceases), and then certify the list of candidates to the Election Boards, and the Boards then proceed to prepare ballots and supplies and conduct the Primary Election?

"Because of apparent conflicts in the statutes, here in Jackson County the County Clerk has been publishing notices of the Election and the Election Board doing the same. In your opinion should this be done to avoid any question of the legality of notices under our statutes?"

The main question which you are asking in your request is whether or not the county clerk should publish the notice of the registration for and the

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election under the general election. I am presuming that you do not require an opinion as to the notice of registration and primary election. The other main question which you ask is whether or not the Board of Election Commissioners of Jackson County are authorized to provide ballots and all other necessary supplies for not only the general election but also for the primary election.

There are many sections of the statutes which are applicable to the above two questions.

## I

We will first set out the sections applicable under Article 15, Chapter 61, R. S. Missouri, 1929, which applies to Board of Election Commissioners in counties having a population of 150,000 or more. The population of Jackson County, as shown by the last decennial census was 470,454 and is governed by the provisions of Article 15, Chapter 61, R. S. Missouri, 1929, in setting up the powers and duties of Boards of Election Commissioners.

Section 10513, Article 15, Chapter 61, R. S. Missouri, 1929, provides that the Board of Election Commissioners shall provide two registration books for each election district in their counties.

Section 10512 R. S. Missouri, 1929 provides for the registration by the Board of Election Commissioners at certain times before the state primary or general election.

Section 10514, R. S. Missouri, 1929, provides that the Board of Election Commissioners shall deliver, or cause to be delivered by the sheriff, the registration books to the various registering officers at least three days before the time set for any registration.

Section 10518 R. S. Missouri, 1929, provides that

the Board of Election Commissioners shall deliver the registration books on the day before the election to the judges of election and receive a receipt therefor.

Section 10519 R. S. Missouri, 1929, provides for the delivery of two blank books to the judges and clerks which shall be called "verification books." Section 10524, R. S. Missouri, 1929, provides for a notice of publication of an intermediate registration.

Section 10525 R. S. Missouri, 1929, reads as follows:

"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. And it shall be the duty of said board of election commissioners to certify such returns to the proper officer upon whom falls the duty of issuing certificates of election. Said board of election commissioners shall also have full power and authority to make any necessary rules and regulations for the conducting of the business of said board and for the expeditious and efficient handling of the business of said board and of the board of registry thereof."

Under the above section it will be noticed that the Board of Election Commissioners who have been appointed under Article 15, Chapter 61, R. S. Missouri, 1929, shall have full power and authority to make any necessary rules and regulations for the conducting of the business of said board. It will also be noticed under this section that no authority is specifically granted allowing the Board of Election Commissioners to prepare and furnish ballots for either a primary or general election.

Section 10531 R. S. Missouri, 1929, reads 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 will be noticed under this section that the Board of Election Commissioners should publish notice in certain papers for four weeks prior to each general registration and election, giving the time and place of such registration and election. All of the above sections referred to and set out are under Article 15, Chapter 61, which applies to Boards of Election in counties having a population of over 150,000 and in section 10531, supra, it will be noticed that it is the duty of the Board of Election Commissioners to publish notices of registration and election at the general election, but not on a primary election. After careful research of Article 15, Chapter 61, we cannot find any authority granting the Board of Election Commissioners, as governed by said article, to prepare and furnish ballots in any election.

II

There are many sections in Article 5, Chapter 61, R. S. Missouri, 1929, which are applicable as to the duties of the county clerk under the general election law. We will refer to and quote a few sections which are applicable to the questions asked in your request.

Section 10299 R. S. Missouri, 1929, reads as follows:

"Except as in this article otherwise provided, it shall be the duty of the clerk of the county court of each county to provide printed ballots for every election for public officers in which the electors or any of the electors within his county participate, and to cause to be printed in the appropriate ballot the name of every candidate whose name has been certified to or filed with him in the manner provided for in this article. Ballots other than those printed by the respective clerks of the county courts according to the provisions of this article shall not be cast or counted in any election."

Under the above section it is the duty of the clerk of the county court to provide printed ballots for every election for public officers in his county. It also provides that ballots other than those printed by the clerks of the county courts shall not be cashed or counted in any election.

In the case of Bradley v. Cox, 271 Mo. 438, 197 S. W. 88, l.c. 90, the court said:

"He must receive from the judges and must use in voting the ballot prepared by the county clerk."

Also, under Section 10301 R. S. Missouri, 1929, whenever the Secretary of State has duly certified to the clerk of each county any proposition for question to be submitted to a vote of the people in which ballots are used marked "yes" or "no." It is the duty of the county clerk to prepare and distribute such ballots.

Under Section 10305, R. S. Missouri, 1929, before the opening of the polls at any election for public officers within any county, the clerk of the county court shall deliver or have the sheriff deliver, to the judges of election of each election district, the ballots.

Section 10265 R. S. Missouri, 1929, reads as follows:

"At least twenty days before the August primary in any year when a primary election is held, each county clerk shall prepare sample official ballots, placing thereon alphabetically, under the appropriate title of each office and party designation, the names of all candidates to be voted for in the precincts of his county. Such sample ballot shall be printed upon tinted or colored paper, and shall contain no blank endorsement or certificate. Such clerk shall forthwith submit such ticket of each party to the county chairman thereof, and mail a copy to each candidate to his postoffice address, as given in his declaration paper, and he shall post a copy of each sample ballot in a conspicuous place in his office. On or before the 10th day before the holding of any primary election the county clerk shall correct any errors or omissions in the ballots, cause the same to be printed and distributed, as required by law in the case of ballots for the general election, except that the number of ballots to be furnished to each precinct shall be one and a half times the number of votes cast by any party in the last preceding election and having nominees and tickets at such primary election."

This section specifically states that on or before the 10th day before the holding of any primary election the county clerk shall prepare sample ballots which shall

be submitted to the county chairman and post copies of the sample ballot in his office and it specifically states that on or before the 10th day before the holding of any primary election the county clerk shall print and distribute the ballots as in the case of the general election.

Section 10261 R. S. Missouri, 1929, reads as follows:

"At least fifty-five days before any primary preceding a general election, the secretary of state shall transmit to each county clerk a certified list containing the name and postoffice address of each person who shall have filed declaration papers in his office, and entitled to be voted for at such primary, together with a designation of the office for which he is a candidate, and the party or principle he represents."

Section 10262 R. S. Missouri, 1929, reads as follows:

"Such clerks shall, upon receipt thereof, publish, under the proper party designation, the title of each office, the names and addresses of all persons who shall have filed declaration papers, giving the name and address of each, the date of the primary, the hours during which the polls will be opened, and that the primary will be held at the regular polling places in each precinct. It shall be the duty of the county clerk to publish such notice for three consecutive weeks next prior to said primary."

Under section 10262, supra, it was the duty of the county clerk to publish three consecutive weeks prior to said primary the names of parties who have filed for office. In this notice he also gives the date,

the place and the hours of the polls. Under section 10261, supra, it is very noticeable that the Secretary of State notifies the county clerks and not the Boards of Election Commissioners. Section 10308 R. S. Mo., 1929, provides that the county clerk of each county shall cause to be printed and provide certain cards to be posted in the election compartment which shall be called "instructions to voters."

Section 10249 R. S. Missouri, 1929, reads as follows:

"At least seven days before an election to fill any public office, the clerk of the county court of each county shall cause to be published in two newspapers representing each of the two major political parties, if such there be, and if not, then in two newspapers, or if there be only one newspaper published within the county then in such newspaper, the nominations to office certified to him by the secretary of state, and also those filed in his office. He shall make two such publications in each of such newspapers before the election, one of which publications in each newspaper shall be upon the last day upon which such newspaper is issued before the election. Provided that no higher rates shall be paid per inch, than is provided by section 13773, chapter 114, R. S. 1929, as amended."

Under the above section it is the duty of the county clerk to publish in certain newspapers the nomination of officers certified to him and filed in his office. It also provides that the publication shall appear in each newspaper upon the last day upon which such newspaper is issued before the election. This publication is probably the publication which you refer to in your request, in which you state that the county

clerk has been publishing notices of the election and the Election Board is doing the same. The notice under Section 10249, supra, is not a notice of an election, but merely a notice showing who had been certified as nominees on the different political tickets. We find no law which makes it a duty of the county clerk to publish any notice of the general election in counties that have more than 150,000 population; but the only notice that he should publish is as to the primary election. The only notice that we find for the publishing as to the date of the general election in counties of over 150,000 is section 10531, supra, which provides that the Board of Election Commissioners shall publish the notice.

Section 10265, supra, specifically states that the county clerk should print and distribute the ballots to the precinct officials and under Section 10299, supra, it is specifically stated that the clerk of the county court should provide printed ballots for any election. On the other hand, under Section 10525, supra, the section only states generally that the Board of Election Commissioners shall have full and complete power to conduct the elections. This section only applies as to the procedure of the election.

In the case of *Kansas City, Mo. v. J. I. Case Threshing Machine Company*, 87 S. W. (2d) 195, par. 13,14, 337 Mo. 913, the court said:

"It is a general rule of (statutory) interpretation that the mention of one thing implies the exclusion of another thing; *expressio unius est exclusio alterius*." 25 R. C. L. 981, sec. 229; 25 C. J. 220; 59 C. J. 980-986, secs. 580-583. 'Where there are, in an act, specific provisions relating to a particular subject, they must govern, in respect of that subject, as against general provisions in other parts of the statute, although the latter, standing alone, would be broad enough to include the subject to which the more particular provisions relate.' Endlich on In-

terpretation of Statutes, 288, sec. 216; see, also, Endlich, 556-560, secs. 397-399; 2 Lewis-Sutherland Statutory Construction (2d Ed.) 916-922, secs. 491-493. In the latter work, it is said (p. 919, sec. 492): 'Where authority is given to do a particular thing, and the mode of doing it is prescribed, it is limited to be done in that mode; all other modes are excluded. Such affirmative legislation, and any other which introduces a new rule, implies a negative.'

"The Supreme Court of the United States has held, where an act authorized a county to create a new liability and provided a mode of discharge (tax on property), that 'the mode prescribed is exclusive of all others.' Wells v. Pontotoc County Supervisors, 102 U. S. 625, 26 L. Ed. 122; see, also, Supervisors of Rock Island County v. U. S., 4 Wall. 435, 446, 18 L. Ed. 419; Galena v. Amy, 5 Wall. 705, 18 L. Ed. 560; Smith v. Stevens, 10 Wall. 321, 19 L. Ed. 933. 'When the Legislature attempts to make a grant of power to a municipality and the same is doubtful or uncertain, all doubts and uncertainties are resolved against the municipality'; and 'powers conferred upon a municipality cannot be enlarged by liberal construction'; instead, 'enumeration of powers operates to exclude such as are not enumerated.' Van Eaton v. Sidney, 211 Iowa, 986, 231 N. W. 475, 477, 71 A. L. R. 820, and authorities cited; St. Louis v. Dreisoerner, 243 Mo. 217, 147 S. W. 998, 41 L. R. A. (N. S.) 177."

Mr. John H. Hardin

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CONCLUSION.

In view of the above authorities, it is the opinion of this department, that the Board of Election Commissioners of Jackson County should publish the notice of the general election and furnish necessary supplies for the election other than the ballots and cards known as "Instructions to Voters."

It is further the opinion of this department that the county clerk shall prepare and furnish all ballots in both primary and general elections and should publish the notice of the primary election. He should also publish a notice of the names of nominees which publication should be at least in the last publication of the newspaper before the election. But the county clerk should not publish a notice of the election as set out in your request.

Respectfully submitted,

W. J. BURKE  
Assistant Attorney General

APPROVED:

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COVELL R. HEWITT  
(Acting) ATTORNEY GENERAL.

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