

ELECTIONS: County Clerks should furnish ballots in counties having a population of more than 150,000.

September 20, 1940.

9-23

John Nardin
Board of Election Commissioners
Court House
Independence, Missouri



Gentlemen:

Receipt is acknowledged of your letter of September 7th in which you asked for an opinion, as follows:

"Please give us your opinion at this time as to whether the Jackson County Election Board or the County Clerk should provide the ballots to be used in Jackson County (outside Kansas City) at the General Election to be held November 5, 1940.

"We are requesting this because of conflict of opinions in the past. We believe it has been the custom in the past (perhaps ever since the Board was first organized here) that the County Clerk provided the ballots for the Primary Election and the Board of Election Commissioners provided those for the General Election.

"Thanking you for your attention to this matter, we are"

The election laws are found in Chapter 61, R. S. Mo. 1929 and Amendatory Acts. Article 7 of this Chapter contains the general provisions for the printing and distribution of ballots. Section 10299 of this Article is 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."

Section 10300, as Amended Laws 1933, page 225, directs the form of the ballot.

Section 10301, directs the county clerk to furnish ballots whenever any question of proposition is to be submitted to the voters.

Section 10302 directs the number of ballots to be provided by the various county clerks and Boards of Election Commissioners and Section 10305 directs the county clerk to cause the ballots to be distributed to the judges of the various election precincts.

Section 10302 is limited in its application by Section 10337 to St. Louis City, Kansas City and other cities having registration of voters.

Article 15 of the above Chapter 61 creates Boards of Election Commissioners in counties having a population of more than 150,000 and provides the appointment of the Board and prescribes duties. We do not have the 1940 census report of Jackson County but, inasmuch as the population is 470,454, by the 1930 census, we are safe in assuming that it has not fallen below 150,000. This Article contains Section 10525, which is 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."

and Section 10536, which has the following provisions relating the duties of the Board of Election Commissioners:

" * * * Said election commission shall make all necessary rules and regulations not inconsistent with this article in reference to the registration of voters and conduct of elections and shall have charge of and make provisions for elections, general, special, local, municipal, state and county or any part thereof at any time to certify the returns thereof to the proper officers issuing certificates of election: * * * "

These two last sections would seem to indicate that it might have been the intention of the Legislature to turn over to the Boards of Election Commissioners full control of the registration of voters and the conduct of elections. However, a careful search of the Article fails to reveal any specific direction to the Board of Election Commissioners who furnish ballots. This omission can not be supplied.

Section 10299 above referred to, having directed the county clerk to furnish the ballots, excludes any other method of providing them.

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 Interpretation 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."

CONCLUSION

It is the conclusion of this department that for all elections held in Jackson County, the county clerk should

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furnish the ballots for all precincts outside the corporate limits of Kansas City.

Respectfully submitted,

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APPROVED:

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WOJ:LB