

ELECTIONS: County court cannot appoint more than six judges in a precinct under any circumstances.

July 15, 1942



Honorable Lawrence Holman
Prosecuting Attorney
Randolph County
Moberly, Missouri

Dear Sir:

We are in receipt of your request for an opinion, under date of July 13, 1942, which reads as follows:

"Under Sections 11,499 and 11,501 R. S. Mo. 1939, the County Court is authorized to appoint three judges from each of the dominant political parties in each precinct where two hundred or more votes were cast in the last preceding general election. Since the enactment of those Sections, the Legislature has repealed and re-enacted Section 11,607 laws 1941, page 363, requiring the election judges to paste a black sticker over the identifying number on each ballot. It is anticipated that this will increase the work of the election judges to the extent that they may need more help. The County Court of this County is considering appointing two more judges in each precinct, one from each of the political parties, in order to take care of these additional duties.

"They have asked me to get an opinion from you as to whether or not they can legally appoint these additional judges."

July 15, 1942

Section 11499 R. S. Missouri, 1939, which applies to all counties in this State, requires that four judges of election shall be appointed by the county court for each election precinct.

Section 11501 R. S. Missouri, 1939, which applies to all precincts in this State that, at the last preceding general election, cast two hundred or more votes, provides that the county court may appoint two additional judges of election, which, in effect, means the appointment of six judges of election; three of which shall be taken from the political party that polled the largest number of votes at the last preceding general election, and three judges from the party that polled the next largest vote.

The two Sections, 11499 and 11501, supra, are the only sections which apply to the appointment of judges in the counties and precincts of this State. We find no other statutory authority providing for the appointment of more than six judges under any circumstances.

In your request you state that it will be necessary to appoint two additional judges by reason of the extra duties placed on the judges, in requiring them to place the black sticker on the ballots, as provided in Section 11607 Laws of Missouri, 1941, page 363.

Section 11607, Laws of Missouri, 1941, page 363, supra, which requires the extra duties, as above set out, does not provide for additional judges, and in no way repeals or amends the general law in reference to the appointment of judges. It can be presumed that the legislature at the time it enacted Section 11607, supra, knew and was aware that Section 11499 and Section 11501, supra, limited the number of judges to be appointed by the county court to six. It has been held in this State, in some cases, that where the number of judges appointed is less than those specified in Section 11499 and Section 11501, supra, it would not invalidate the election, or deprive the voters of their rights of suffrage, for the reason that the voters were not responsible for the negligence on the part of the election commissioners or election

Honorable Lawrence Holman

(3)

July 15, 1942

officers.

In the case of Breuninger et al v. Hill et al., 210 S. W. 67, 1. c. 71, the court said:

"* * * Aside from this, the law governing the appointment of judges and clerks is clearly directory, and courts will not nullify the result of votes honestly cast and counted although the statute has not been strictly complied with. Sanders v. Lacks, 142 Mo. 255, 43 S. W. 653."

Section 11496 R. S. Missouri, 1939, sets out the compensation of judges and clerks of elections as being a sum which the county court may deem reasonable, not to exceed three dollars per day, to be paid out of the county treasury. We find no authority granted the county court to pay for additional judges, other than those set out in the two sections, 11499 and 11501, supra.

Under Section 2480 R. S. Missouri, 1939, the county court shall have control and management of the property of the county, and also is empowered to audit and settle all demands against the county. In construing this section, the Supreme Court of Missouri, in the case of Hillside Securities Co. v. Minter et al, 254 S. W. 188, par. 4, said:

"Appellant cites section 2374, R. S. 1919, which provides that the county court shall have power to audit and settle all demands against the county. This, of course, means lawful demands against the county. It cannot be construed as giving authority to the county court to audit and

Honorable Lawrence Holman

(4)

July 15, 1942

settle claims against the county court arising under void contracts."

Section 2374 R. S. Missouri, 1919, as set out in the above quotation, is now Section 2480 R. S. Missouri, 1939.

County courts are not general agents of counties or states, but their powers are limited and defined by statute, and their acts outside of, and beyond, statutory authority are void. (Morris v. Karr, 114 S. W. (2d) 962, 342 Mo. 179.)

Also, in the case of Nodaway County v. Kidder, 129 S. W. (2d) 857, pars. 2-4, the court said:

"County courts are courts of record, created and given jurisdiction to transact all county business, and to audit and settle all demands against the county. Article 6, Section 36, Constitution of Missouri, Mo. St. Ann.; Sec. 2078, p. 2658. The above statute providing for settling and auditing claims against the county applied only to lawful demands and does not authorize the county court to audit and settle claims arising on void contracts. Hillside Securities Co. v. Minter, 300 Mo. 380, 397, 254 S. W. 188, 193. * * * * *"

Also, in the case of State v. Jackson, 84 S. W. (2d) 988, par. 1, the court said:

July 15, 1942

" * * * The answer to that question depends upon the statutory powers of the county court. Such court is a creature of the Constitution, and its powers are limited by the terms of the various statutes defining its powers. It has no common-law or equitable jurisdiction."

The same holding, as in the above cases, was held in the case of Jensen v. Wilson Township, Gentry County, 145 S. W. (2d) 372.

In view of the above cases, and in view of the limitation placed upon the county court, as to the number of judges to be appointed under Section 11499 and Section 11501, supra, the county court will be prohibited from paying said unlawfully appointed additional judges the amount of money as set out in Section 11496 R. S. Missouri, 1939.

CONCLUSION

It is, therefore, the opinion of this department that the county court of Randolph County cannot appoint two additional judges in each precinct, other than those allowed under Section 11499 and 11501, supra, in order to take care of the additional duties of using the black sticker over the identifying number of each ballot.

It is further the opinion of this department that in all counties in this State four judges of election shall be appointed by the county court for each election precinct, but if any of the precincts in the county at the last preceding general election cast two hundred or more votes the county court may appoint

Honorable Lawrence Holman

(6)

July 15, 1942

two additional judges of election, but in no event
not more than six judges of election.

Respectfully submitted

W. J. BURKE
Assistant Attorney General

APPROVED:

VANE C. THURLO
(Acting) Attorney General

WJB:RW