

ELECTIONS: Judges and clerks of special referendum election in Kansas City are to be paid half by Kansas City and half by Jackson and Clay counties.

February 27, 1950

FILED NO. 18

Board of Election Commissioners
Kansas City, Missouri

Attention: Mr. Elmo B. Hunter
Mr. W. Raymond Hedrick
Attorneys



Gentlemen:

This is in answer to your letter of recent date requesting an official opinion of this department, and propounding the following question:

"Referring again to the special constitutional amendment election of April 4, 1950, concerning the proposed increase in gasoline tax, the Board of Election Commissioners requests an opinion as to whom should bear the expense of the judges and clerks to be used in said election. With regard thereto, we direct your attention to Sections 12184, 12185, and 12186 of the General Laws regulating elections, which appear to bear upon that question. You will recall from our recent conference with the Governor, a representative of your office a representative of the Election Board, and a representative of Jackson County, Missouri, that the question was discussed, and that it was suggested that the opinion include any possible liability upon the State, Jackson County, Clay County, and the City of Kansas City, Missouri, for that expense."

Your attention is called to the fact that this is not a special constitutional amendment election, but is a special election for the people to approve or reject House Committee Substitute for House Bill No. 185, enacted by the 65th General Assembly.

We find no constitutional or statutory provision authorizing the State of Missouri to pay judges and clerks for serving at a special referendum election. Therefore, it is our opinion that the state is in no way liable for such costs. We believe that Article 23, Chapter 76, Mo. R.S.A., determines the liability for the payment of clerks and judges of such election. Section 11885, Laws of Missouri, 1947, Vol. I, page 288, found in Article

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17, Chapter 76, Mo. R.S.A., relating to counties of 150,000 or over, applies, we believe, only to that part of Jackson County located outside of Kansas City. While the reference in Section 11851, R.S. Mo. 1939, which is the first section in Article 17, Chapter 76, Mo. R.S.A., states that the article is applicable only to that part of a county outside of cities having a registration as provided in Article 22, Chapter 76, R.S. Mo. 1939, which article applies to cities over 100,000 and which article has been repealed, the case of State ex rel. Kirby, 136 S.W. (2d) 319, decided by the Supreme Court of Missouri, held that a claim by a person assisting in registration of voters of Kansas City was allowable against Jackson County for half the pay of such person and should be paid by Jackson County under authority of what is now Article 23, Chapter 76, Mo. R.S.A., which article is applicable to cities of more than 300,000 and less than 700,000. It is our view, therefore, that the provisions of Article 23, Chapter 76, Mo. R.S.A., alone are determinative of the question contained in your opinion request. We might add that this conclusion is strengthened by the fact that the Legislature recognized such to be the correct interpretation in enacting Section 113.50 of House Revision Bill No. 2051. Such section provides as follows:

"In all counties of this state now having, or which hereafter may have, four hundred and fifty thousand inhabitants or over, there shall be a registration of all qualified voters; and the conduct of elections held in such counties shall be governed by the provisions of this article: provided, that where any city in such counties already has a system of registration as provided for in article 23, chapter 76, Revised Statutes of Missouri, 1939, this article shall not apply to such city, but only to such parts of such counties as lie outside the corporate limits of any such city."

Such House Bill was approved by the Governor on February 3, 1950, and will be in full force and effect ninety days after the January 14, 1950, adjournment of the Legislature.

We believe that the provisions of Article 23, Chapter 76, Mo. R.S.A., are applicable to the question stated in your opinion request rather than Section 11496, Laws of Missouri, 1945, page 882, the general law for the payment of judges and clerks by counties, insofar as Clay County is concerned.

Section 12184, Laws of Missouri, 1947, Vol. I, page 282, provides as follows:

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"In all cities not within counties the election commissioners and assistants employed by the board of election commissioners shall be paid by the city; in all other cities to which this article applies the salaries of the election commissioners and assistants shall be paid one-half by the city and one-half by the county. The members of such boards for cities now having or which may hereafter have a population of more than 300,000 or less than 700,000 shall receive a salary of three thousand dollars per year, payable monthly. The members of said board designated as the chairman and the secretary, respectively, shall be paid an additional salary of six hundred dollars per year, payable monthly. The chief assistant employed by each of said boards of election commissioners shall receive a salary of not to exceed three thousand three hundred dollars per year, payable monthly. Other assistants, not exceeding three in number for each board, shall receive a salary of not to exceed twenty-nine hundred dollars per year, payable monthly. Other assistants, not exceeding ten in number for each board, shall receive a salary of not to exceed twenty-six hundred dollars per year, payable monthly. All other additional assistants, if any, shall receive not to exceed seven dollars per day for the time actually employed. Compensation for overtime services necessarily and actually performed by any persons employed at the office of the board may be paid at the rate of such employee's regular pay. Precinct judges and clerks shall receive as pay seven dollars for each day or part of day while on duty, except pay shall be allowed only for those days mentioned in this article. All expenses incurred by said board of election commissioners, and all costs and expenses of registration and election in such cities shall be paid one-half out of the city treasury and one-half out of the county treasury. In cities not within a county, all shall be paid out of the city treasury, and all printing,

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binding, etc., shall be let by contract, subject to such regulations as are or may hereafter be prescribed by ordinance of any such city."

Section 12185, R. S. Mo. 1939, provides:

"At all city elections, general or special, though other than city officers may be elected at the same time with such city officers, and at all special elections in any part of the city, at which a city officer is elected, such city shall pay such judges and clerks of election for their services under this article."

Section 12186, R.S. Mo. 1939, provides:

"At all general, county and state elections which include officers elected through the whole county though other than state or county officers are also elected, and all special elections for a county or state officer or member of congress or member of the legislature, such county shall pay such judges and clerks of election for their services under this article."

Obviously, the special referendum election to be held April 4, 1950, is not such an election as is provided for in section 12185, supra. This special referendum election is not a general county or state election which includes officers elected through the whole county, nor does the election come within any other classification found in Section 12186, supra. We believe that that part of Section 12184 providing that all costs and expenses of registration and election in such cities shall be paid one-half out of the city treasury and one-half out of the county treasury applies, and that the costs must be paid half by the counties and half by the city because all costs are to be equally divided by the terms of such section, except insofar as excepted by Sections 12185 and 12186. It is clear that Sections 12185 and 12186 do not purport to cover all elections because we find in Section 12279, R.S. Mo. 1939, applicable to cities of 600,000 or over, the following provisions:

"At all general, county and state elections which include officers elected through the whole county, though other than state or

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county officers are also elected, and all special elections for a county or state officer or member of congress or member of the legislature, and any special election for any purpose whatever, such county shall pay such judges and clerks of election for their services under this article."

Section 12279, supra, was enacted at the same session of the Legislature as Sections 12185 and 12186 were enacted, both bills containing such sections being approved by the Governor on June 30, 1937, and it is clear that the Legislature knew that Sections 12185 and 12186 did not purport to cover all possible elections but intended to take care of elections not covered by Sections 12185 and 12186 in the all inclusive language of Section 12184, quoted supra.

Section 12095, R.S. Mo. 1939, applicable to cities of 300,000 to 700,000 population, defines "election" as follows:

"'Election' shall mean any general, special, municipal or primary election, unless otherwise specified."

Section 12181, R.S. Mo. 1939, provides, in part, as follows:

"The word 'election,' as used in this article, shall be construed to designate elections had within any city, for the purpose of enabling electors to choose some public officer or officers under the laws of this state or the United States, or to pass any amendment, law or other public act or proposition submitted to vote by law."

We believe such definitions do include the special referendum election to be held April 4, 1950, and that the only section which uses the term "election," as defined in such sections, i.e., the only section in which the word "election" is used without modification, is Section 12184, and that the provisions of such section govern the pay of judges and clerks in the special referendum election. Under the provisions of such section half the cost of judges and clerks should be paid by Kansas City, half the cost of judges and clerks in that part of Kansas City which is in Jackson County should be paid by Jackson County, and half the cost of judges and clerks in that part of Clay County annexed to Kansas City January 1, 1950, should be paid by Clay County.

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CONCLUSION

It is the opinion of this department that the cost of judges and clerks of Kansas City for the special referendum election to be held April 4, 1950, should be paid as follows:

- (1) Half the cost of such judges and clerks should be paid by Kansas City.
- (2) Half the cost of such judges and clerks in that part of Kansas City located in Jackson County should be paid by Jackson County.
- (3) Half the cost of such judges and clerks located in that part of Clay County annexed to Kansas City January 1, 1950, should be paid by Clay County.

Respectfully submitted,

C. B. BURNS, JR.
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APPROVED:

J. E. TAYLOR
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