

BOARD OF ELECTION COMMISSIONERS: It is within the power of the  
COUNTIES: Legislature to provide that the  
expenses of a board of election  
commissioners of a city located  
in two counties shall be paid  
by both such counties.

September 13, 1950

FILED NO. 49



Honorable Robert G. Kirkland  
Prosecuting Attorney  
Clay County  
Liberty, Missouri

Dear Mr. Kirkland:

This will acknowledge receipt of your letter of recent date, in which you request an opinion of this department on the following proposition:

"House Bill 2055 passed at the last session of the Legislature and effective April 14, 1950, provided for the payment of expenses of elections conducted in and by large cities lying in two counties. This statute appears to give the Board of Election Commissioners of the city authority to issue warrants drawn on the treasury of the respective counties. Can an outside agency, unrelated and unconnected to the county government, be given the power and authority to draw warrants on the county treasury?"

Section 117.01 of House Revision Bill No. 2055 of the 65th General Assembly of Missouri defines "county" as follows:

"(b) 'County' shall mean any county or counties in which any city to which this article applies is situated."

Section 117.17 of said House Revision Bill No. 2055 provides as follows:

"Said board of election commissioners shall audit all the claims of judges and clerks of elections, and all other claims under this article, and shall draw a warrant therefor upon such county or counties and/or city treasury, as the case may be."

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Section 117.145 of said House Revision Bill No. 2055 provides as follows:

"When any such city shall be located in more than one county, all such salaries and expenses shall be paid one-half out of the city treasury and one-half out of the combined treasuries of all such counties with each county paying in proportion to the population of that part of each such city located in such county according to the last preceding federal decennial census."

The Supreme Court of Missouri in the case of State ex rel. Lynn v. the Board of Education of the City of St. Louis, 141 Mo. 45, 41 S.W. 924, considered the question of whether or not the City of St. Louis had to pay the cost of a school election held in said city. The court held (Mo.) l.c. 48, 49, 50:

"The contention of the relator is that inasmuch as the Constitution and laws of this State authorize a separate taxation for school purposes, the costs of this election should be paid out of the school fund and not out of revenues raised for municipal purposes only, and further that the legislature has no constitutional power to require the city of St. Louis to pay the expenses of this school election. If the last contention is not well made, then the answer to relator's first contention is simply that the legislature has thought proper to provide for the expenses of the election of the board of education of the city of St. Louis out of a fund and by a way not approved by his judgment, if we read aright the act creating the respondent board of education and the election laws of 1895 to which it refers in section 6 thereof.

"Just what constitutional provision would be violated, if it is determined that the legislature has provided that the expenses incurred by the election of the directors of the board of education of the city of St. Louis shall be defrayed by the city of St. Louis out of its general revenue, is not named or designated by the relator; but be that it may, the constitutional power of the legislature to authorize by law a tax to be levied by the municipal authorities upon property within its limits to pay the expenses of allelections held therein ought not now to be a question in this State since the ruling of this

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court in the case of *The State ex rel v. Owsley*, 122 Mo. 68. In that case this court, construing section 1011, Revised Statutes 1889, containing a similar provision to section 91 of the present election law, upon which respondent relies to throw the costs of this election upon the city, held that the legislature had the constitutional right to require the city to pay the expenses of holding all elections, whether national, state, or municipal, held in such city, out of revenue raised by the city.

"The legislature has control over the revenues of the city as over that of the county and State, and can direct by law that the expenses of elections held in a municipality, for the election of school directors, or for local purposes, shall be paid out of the treasury of the municipality from taxes levied and collected by municipal authorities."  
(Underscoring ours)

The Supreme Court of Missouri in the case of *State ex rel. Webster Groves Sanitary Sewer District v. Smith*, 87 S.W. 2d. 147, 337 Mo. 855, considered the question of whether or not the city of Webster Groves had to pay the cost of holding a sewer bond election for said sewer district, and in said case said, (S.W.) l.c. 153:

"It is next contended that the act is unconstitutional because it authorizes the expenditure of county funds in aid of sewer districts in violation of section 46 of article 4 of the Constitution of Missouri.

"Section 5 of the act (Mo. St. Ann. Sec. 11071e-5, p. 7431) provides that, after the incorporation of a sewer district by the circuit court, it shall be the duty of the circuit court to order the county court or the election commissioners, if there be election commissioners in the county, to call and hold an election within sixty days after the issuance of the order for the purpose of electing a board of trustees and voting on a proposition to incur indebtedness by the district for the construction

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of district sewers. Section 7b (Mo. St. Ann. Sec. 11071e-9, p. 7431) provides that the expense of elections held prior to the issuance of bonds and the levy of taxes by the district shall be paid out of the general revenues of the county. This section also provides that all indebtedness incurred by the district prior to the issuance of bonds may be paid out of funds received from the sale of bonds. It is the payment of these election expenses by the county which furnishes the grounds for this objection to the act. Relator contends that section 7b (Mo. St. Ann. Sec. 11071e-9, p. 7431) clearly contemplates the repayment of the election expenses to the county out of the proceeds of the sale of bonds, and that, since in the case at bar the election resulted in an authorization to issue the bonds, the question is a moot one. We will not so consider it. Situations may arise where the election was unfavorable to the issuance of bonds, in which event there could be no repayment.

"No authority is cited by respondent in support of his position. Relator cites the case of State ex rel. Lynn v. Board of Education, 141 Mo. 45, 41 S.W. 924, in support of this provision of the act. In that case the same objection was made to an act of the Legislature requiring the city of St. Louis to pay the expense of a school election held within the city. We sustained the validity of the statute. Again in the recent case of State ex rel. Russell et al. v. State Highway Commission, 328 Mo. 942, loc. cit. 963, 42 S.W. 2d 196, we held that a statute authorizing the state highway commission to build state highways through municipalities with state funds was not a gift or grant to such municipalities within the meaning of section 46 of article 4. We see no difference in principle between those cases and the situation before us. The payment of the election expense of the newly created sewer district was not a gift or grant to that district within the meaning of section 46 of article 4 of the Constitution."

The Supreme Court of Missouri has said in State ex rel. Preisler v. Woodward, 105 S.W. 2d 912, 340 Mo. 906, (S.W.) 1.c. 915:

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"\* \* \*It is true, the legislative power, generally speaking, is unlimited, save as the Constitution has set bounds to it.  
\* \* \*"

The Supreme Court of Missouri in the case of State ex rel. Volker et al. v. Kirby, 136 S.W. 2d 319, 345 Mo. 801, considered the question of whether or not Jackson County had to pay warrants issued by the Kansas City Election Commissioners. The court said (S.W.) 1.c. 320:

"Respondent also contends that the election law in question violates Sec. 36, Art. VI of the constitution, Mo. St. Ann., which follows: 'In each county there shall be a county court, which shall be a court of record, and shall have jurisdiction to transact all county and such other business as may be prescribed by law. \* \* \*' In other words, he contends that the election board is conducting county business.

"The maintenance of an election board is a state function. Indeed, respondent does not contend that the maintenance of such a board is not a state function. If a state function, the legislature has the authority to compel the city and county to join in providing for said maintenance. State ex rel. Faxon v. Owsley, 122 Mo. 68, 26 S.W. 659; State ex rel. Lynn v. Board of Education, 141 Mo. 45, 41 S.W. 924; State ex rel. Hawes v. Mason, 153 Mo. 23, 54 S.W. 524; State ex rel. Wm. C. Reynolds et al. v. Hy. L. Jost et al., 265 Mo. 51, 175 S.W. 591, Ann. Cas. 1917D, 1102."

Judge Ellison in a concurring opinion in this same case said, (S.W.) 1.c. 323:

"\* \* \*Respondent says they delegate unlimited power to the Board of Election Commissioners of Kansas City to appropriate money for their own use and to create subordinate officers, in violation of Article III and sec's 1 and 10 of Art. X of the state Constitution. This contention is grounded mainly on State ex rel. Field v. Smith, 329 Mo. 1019, 49 S.W. 2d 74.

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"The power is not despotic, with absolute immunity from judicial review; but the board's decision is prima facie valid and the county court has no independent power to overrule it. This is not only what the statute means, but is the wiser rule. The way would be thrown open for raids on the treasury if such unlimited power were placed in improper hands, but, on the contrary, the legislative purpose would be thwarted if the board were subject to local domination."

CONCLUSION

It is the opinion of this department that the Legislature has the power and authority to provide for the payment by both counties of warrants issued by a board of election commissioners of a city located in two counties.

Respectfully submitted,

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Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
Attorney General