

SCHOOL ELECTIONS) Clerks and judges of elections serving in
AND ELECTIONS:) dual capacity as clerks and judges for school
election and special gas tax referendum
election are entitled to compensation in same
manner as though said election were conducted
separately.

March 14, 1950



Hon. David W. Wilson
Prosecuting Attorney
Lewis County
La Belle, Missouri

Dear Mr. Wilson:

We have your recent letter requesting an official opinion of this department. The sole question embodied in your opinion request is as follows:

"If the same judges and clerks are used in both the annual school election and the special gas tax referendum election, would they be entitled to be paid for services at each of the elections or only for one election?"

There is no statute or reported decision by a court of this State directly concerned with the particular question embodied in your opinion request. However, Section 10681, R. S. Mo. 1939, applicable to school elections in cities containing more than 75,000 and less than 500,000 inhabitants provides in part as follows:

"* * * * the judges and clerks of such municipal elections shall act as judges and clerks for such elections for school directors and the submission of such questions, but the ballots for directors and upon such questions shall be on separate pieces of paper and deposited in a separate ballot box kept for that purpose;
* * * * *." (Underscoring ours)

Section 10483, Laws of Missouri 1943, page 885, provides in part as follows:

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"* * * * in all cities and towns having a population exceeding two thousand and not exceeding one hundred thousand inhabitants in other counties, said elections shall be held at the same time and places as the election for municipal officers, and the judges and clerks of such municipal election shall act as judges and clerks of said school election, but the ballots for said school election shall be upon separate pieces of paper and deposited in a separate ballot box kept for that purpose.
* * * *" (Underscoring ours)

It will be noticed that the above quoted provisions require only the judges and clerks of municipal elections to serve as judges and clerks of school elections. Such persons are therefore actually serving in only one capacity, namely, as judges and clerks of the municipal and school election. In the present instance, however, persons who are appointed by the county court to serve as judges of the special referendum election may also be appointed by the school board to serve as judges of the school election; such appointments are discretionary with the school board and the judges so appointed are actually serving in a dual capacity, that is as judges of the special referendum election and as judges of the school election. The same reasoning would apply to the clerks employed and used for the said elections.

Therefore, it is our view that the judges and clerks of election who serve by appointment in the referendum election and by appointment in the school election are entitled to compensation for such services for each election.

CONCLUSION

It is, therefore, the opinion of this department that clerks and judges of election in Lewis County serving in the dual capacity of clerks and judges of election for a school election and the special referendum election on the State Gasoline Tax are entitled to be compensated for their services in the same manner as though the said elections were conducted entirely separate and apart from each other.

Respectfully submitted,

PHILIP M. SESTRIC
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General