

SOCIAL SECURITY: The Kansas City Board of Election Commissioners, members of the Board of Election Commissioners, and its employees, for the purpose of Senate Bill No. 3, ^{as amended by the Senate} are covered by agreements entered into between the city of Kansas City and the state agency; the county of Jackson and the state agency; and county of Clay and the state agency, extending the benefits of Federal Old-Age and Survivors insurance to their employees.



October 19, 1951

Honorable William E. Tipton, Attorney
Board of Election Commissioners
Kansas City, Missouri

10/19/51

Dear Mr. Tipton:

Your request for an official opinion of this department reads as follows:

"The Board of Election Commissioners of Kansas City, Missouri, desire to come under the provisions of the recent Legislative enactment pertaining to Social Security.

"The Board has been advised by Mr. E. L. Pigg, State Comptroller, that there is considerable question as to who is to handle the contract for the Board of Election Commissioners, and, therefore, we should like an opinion from your office advising us of our status relative to the Social Security laws of Missouri.

"As you probably know, the Kansas City Board of Election Commissioners is a separate entity and we draw our funds from the City of Kansas City, Missouri, Jackson County and Clay County, but in reality we are the disbursing agent as far as the pay roll is concerned.

"We should like to come within the provisions of the Act before the end of September, and, therefore, we would like to have you advise us and also advise Mr. Pigg of our status."

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You particularly request information in regard to the standing of your Board under the provisions of Senate Committee Substitute for Senate Bill No. 3. Assistant Attorney General Donal D. Guffey recently wrote an opinion which was published as the opinion of this department that the members of the Board of Election Commissioners and its employees for the purposes of Senate Bill No. 3 would be covered by an agreement entered into between the City of St. Louis and the state agency extending the benefits of the Federal Old Age and Survivors insurance to its employees.

Section 117.140, RSMo 1949, provides as follows:

"* * * The election commissioners shall each receive a salary of three thousand dollars per year, payable monthly. The members of the 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 the board 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, shall receive a salary of not to exceed two thousand nine hundred dollars per year, payable monthly. Other assistants, not exceeding ten in number, shall receive a salary of not to exceed two thousand 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 chapter. 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. * * *"

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It is also provided in Section 117.150, RSMo 1949, 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. (1949 H.B. 2055 Sec. 117.145)."

The Board of Election Commissioners of Kansas City and its employees are not paid by the State of Missouri and there is no way the tax can be taken out as provided in Section 6, subsection 5 of Senate Bill No. 3. That subsection reads as follows:

"The state comptroller at the end of each quarter shall certify to the state treasurer the amount of the state's share of the contributions required to be paid to the federal agency on account of the officers and employees of each department, division, agency or unit of state government whose services are covered by an agreement entered into under section 2. Thereupon the state treasurer shall immediately transfer such amounts from the proper funds from which the officers and employees were paid to the credit of the contribution fund."

The above, however, would apply only in the event the Board and its employees were state officers and employees. In regard to whether or not the Election Board is a political subdivision, it is necessary to look to Section 1, subsection (7) of Senate Bill No. 3, which reads as follows:

"'Political subdivision', any county, township, municipal corporation, school district, or other governmental entity of equivalent rank;"

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The Board of Election Commissioners is not one of those named. We cannot find that it is equivalent in rank with any of those as far as its governmental functions are concerned. The political subdivisions under Senate Bill No. 3 are politically defined above for the purposes of Senate Bill No. 3.

There is no doubt that the intention of the Legislature was to include Election Boards under the provisions of Senate Bill No. 3. As for instance, we quote from the bill, Section 1, subsection (2), in part:

"'Employee', elective or appointive officers and employees of the state, including members of the general assembly, and elective or appointive officers and employees of any political subdivision of the state, or any instrumentality of either the state or such political subdivision; * * *"

The Election Board, its members and employees consist of elected and appointed officers and employees of a political subdivision. They are not employees of the state under the terms of the State Social Security Act. It is our opinion, however, that the political subdivision employing them is the nearest subdivision of government from which they receive their pay.

In the matter of *Shamburger v. Commonwealth et al.* 240 S.W. (2d) 636, it has been ruled by the Kentucky Court of Appeals as follows, l.c. 637:

"The fundamental point, it seems to us, is the fact that contributions (or excise taxes) required by the law to be paid by both employers and employees, is a percentage of wages or compensation paid and received. 26 U.S.C.A. secs. 1400, 1410. Therefore, so far as liability for payment is concerned, the controlling point is the source of the compensation, i.e., who pays the salaries." (Emphasis, ours.)

In this case, the nearest political subdivisions from which payment to the Board of Election Commissioners is made are defined in Sections 117.140 and 117.150, RSMo 1949. That would make the city of Kansas City, Missouri, and the counties of

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Jackson and Clay responsible to the extent of the proportion of salary that each pay. Again under Section 5, subsection 1, we think there is justification for contracts to be made between these political subdivisions in regard to the method of including the election board. We quote in part from the above subsection, as follows:

"* * * Two or more political subdivisions or instrumentalities may form a joint plan if, in the absence of such joint plan, because of the requirements of the agreement entered into pursuant to section 2 of this act, or because of any requirement imposed by federal law, any subdivision included in such unit would be unable to submit an approvable plan."

CONCLUSION

It is, therefore, the opinion of this department that the Board of Election Commissioners of Kansas City and its employees are covered by agreements entered into between the city of Kansas City and the counties of Clay and Jackson, and the state agency extending the benefits of the Federal Old-Age and Survivors insurance to the employees of Kansas City and Jackson and Clay counties. In the event that all of the subdivisions mentioned are not covered by such agreement, then the Kansas City Board of Election Commissioners and its employees are covered in proportion to payments received from those political subdivisions that have come under and are covered by agreements.

Respectfully submitted,

JAMES W. FARIS
Assistant Attorney General

APPROVED:



J. E. TAYLOR
Attorney General

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