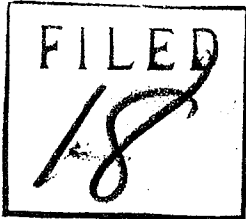


BOARD OF ELECTION COMMISSIONERS: (Counties of 200,000 to 450,000 inhabitants); Procedure for acquisition of (1) Office furniture, equipment and supplies, (2) Election supplies, equipment and services, and, (3) Voting machines.



April 30, 1954

Honorable John J. Cole, Chairman
Board of Election Commissioners
St. Louis County
Clayton 5, Missouri

Dear Sir:

Reference is made to your request for an official opinion of this department reading as follows:

"I am writing as Chairman of the St. Louis County Board of Election Commissioners to request an opinion from your Department concerning our purchasing authority and procedure with reference to (1) Office furniture, equipment and supplies, (2) election supplies, equipment and services, and (3) voting machines.

"We call your attention specifically to Section 113.110 R. S. No., 1949, which gives the Election Board authority to provide election supplies and equipment (and we presume services too, such as hauling and storing), subject to the provisions of Section 50.660, the County Budget Law. We want to know if this latter Statute is to be construed to require all such contracts to be executed by the St. Louis County Purchasing Agent, an officer created by the St. Louis County Charter, Article V, Section 38. If it is to be so construed, that is, to vest sole authority to make purchases in the County Purchasing Agent, does the Election Board have the right and the duty to select the items to be purchased or in some manner designate those which we

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feel are most suitable for the needs of the Election Board or for the voters of St. Louis County.

"In respect to voting machines, we refer you further to Chapter 121, Mo. Rev. Stat. Cumulative Supplement 1953 Sec. 121.010 and Section 121.070 which authorizes the Election authority to adopt and provide voting machines. Section 121.020 directs that the Governing Body (County Council) must provide within limitations imposed by law, for the payment of the purchase price, "as may be proposed by the Election authority". Does this last quoted phrase and the other sections of law authorize the Election Board to select the most suitable voting machine or is the choice left to the County Council which pays for them.

"Finally we might add that Article III, Section 22, Paragraph '6' of the St. Louis County Charter requires the County Council 'to establish the procedures governing the making of County contracts and the purchasing of County supplies and equipment by competitive bidding'. The Council has by order established such procedures. We would like to know to what extent our purchases in the above three categories are controlled, if at all, by the above provisions of the St. Louis County Charter and the ordinances regarding purchasing procedures enacted pursuant thereto.

"May we urge an immediate consideration and reply to the foregoing."

I.

Procedure for the Acquisition of Office
Furniture, Equipment and Supplies.

It is our understanding that in this particular portion of your inquiry you refer to the office furniture, equipment and supplies used by your board in its office, and do not include therein supplies incident to the actual conduct of elections.

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Upon this premise we direct your attention to the provisions of Section 113.060, RSMo 1949, which reads in part, as follows:

"Upon the appointment of said election commissioners the county court shall at once provide and equip suitable offices for such commissioners and their assistants, * * *." (Emphasis ours.)

It seems to be the clearly expressed legislative intent as exemplified by the quoted portion of this statute that the duty of providing office furniture, equipment and supplies for the board has been enjoined upon the county court. Of course, in this particular county operating under a special charter adopted pursuant to constitutional authorization, the functions of the county court are discharged by the body denominated the "county council." We note that under Section 6, Article III of the Charter for St. Louis County Missouri, the powers and duties vested in county governing bodies in other counties has been vested in the county council and we therefore hold it is the duty of that body to provide and equip the offices of the Board of Election Commissioners. The mechanics incident to the purchase of such equipment will, of course, be those followed by the county council in making all other similar purchases.

II.

Procedure for the Acquisition of Election Supplies, Equipment and Services.

This phase of your inquiry relates to matters which are actually a part of the election machinery and the casting of ballots. We believe that such items are in a different category than those discussed under I, supra, in so far as the method of acquisition of such items is concerned. We direct your attention to the provisions of Section 113.110, RSMo 1949, reading as follows:

"Said board of election commissioners is hereby authorized to provide, subject to the provisions of section 50.660, all necessary ballot boxes, registration books, verification lists, poll books, tally sheets, booths, printed ballots, blanks,

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stationery and all necessary supplies and equipment for the conduct and holding of registrations and elections, including primary elections, and for every incidental purpose connected herewith. Said election commissioners shall also be authorized to require bonds sufficient in sum to insure prompt and faithful compliance with all such contracts and to contract for or rent the polling places and places of registration and outfit and equip the same and secure light, heat, and other conveniences for same. In all cases where the printing of official ballots is awarded to a bidder, the board of election commissioners may require the constant guarding of such ballots by a guard of their own selection, at the expense of the contractor, from the beginning of the printing of the same until their safe delivery at the office of said board of election commissioners. The salaries and expenses of said board of election commissioners shall be audited and paid as the salaries and expenses of other county officers are audited and paid." (Emphasis ours.)

Here again it seems to be the General Assembly has clearly expressed its intent with respect to the acquisition of items of the nature under consideration. The language of the statute is definite and unambiguous and therefore calls for no construction.

We believe that in holding the Board of Election Commissioners is authorized to acquire items of this nature we are but following the intent of the General Assembly as such intent has been consistently expressed, at least from 1935. In examining the historicity of Section 113.110, RSMo 1949, we find that in an act found Laws of Missouri, 1935, page 229, paragraph 47, such board was unqualifiedly authorized to acquire such items. At that time the board was granted the power to directly negotiate for such acquisition and after having audited claims for the payment thereof, were further authorized to certify such claims direct to the county treasury for payment.

Subsequently, in an act found Laws of Missouri, 1937, page 231, this unqualified authorization was modified to

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require such purchases to be made subject to the provisions of the County Budget Law. However, the power was left with the board to determine the necessary items to be purchased and the statute remains in this form as found in the last revisions.

From the foregoing we reach the opinion that the purchase of election supplies, equipment and services is to be made by the Board of Election Commissioners following the procedure established by applicable statutory enactments with respect to the procedure to be followed in consummating such purchases and contracts with respect thereto.

At this point we take note of the fact that St. Louis County operates under a special charter adopted pursuant to constitutional authorization contained in the Constitution of Missouri, 1945. We consider the following constitutional provisions to be pertinent:

"Sec. 18 (b). Provisions required in county charters.--The charter shall provide for its amendment, for the form of the county government, the number, kinds, manner of selection, terms of office and salaries of the county officers, and for the exercise of all powers and duties of counties and county officers prescribed by the Constitution and laws of the state."
(Emphasis ours.)

The charter so adopted in so far as it relates to the duties enjoined by the County Budget Law upon officials in other counties, provides for the creation of a Division of Purchasing. Section 38, Article V of the charter reads as follows:

"The department of Administration shall have the following divisions: Division of the Budget, Division of Purchasing, Division of Law and such others as may be created by ordinance. These divisions shall be headed by the County Supervisor, the Purchasing Agent, and the County Counselor, respectively." (Emphasis ours.)

We are further advised that the county council has pursuant to the provisions of Paragraph 6, Section 22,

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Article III of the chapter established the procedures relative to the making of county contracts and the purchasing of county supplies. This charter provision reads as follows:

"Section 22. Pursuant to and in conformity with the Constitution of Missouri and without limiting the generality of the powers vested in the Council by this Charter, the Council shall have, by ordinance, the power:

"(6) To establish the procedures governing the making of County contracts and the purchasing of County supplies and equipment by competitive bidding, and to prescribe the form and contents of the annual County financial statement, provided that such procedures and limitations as are now established by law shall continue in effect until superseded by ordinances of the Council; * * *"

We therefore further believe that the actual purchases and negotiation of contracts are to be made and negotiated in accordance with such procedure so established. This is not to be taken to mean, however, that such purchasing officer shall have any discretion with respect to the type, kind or number of such items so purchased or contracts so let, as it is our belief that all matters of this nature rest in the sound discretion of the Board of Election Commissioners.

III.

The Acquisition of Voting Machines.

Provisions for the adoption of voting machines in your county have been authorized under the provisions of Chapter 121, RSMo 1953 Cumulative Supplement. The specific authority is contained in Section 121.010. It will be observed that under the provisions of Section 121.020 such adoption of this method of balloting is conditioned upon the affirmative action of the inhabitants of the election district and the providing of necessary funds required for the acquisition of voting machines. We are advised that both of these steps have been taken within your election district and that the Board of Election Commissioners has formally adopted this method of voting.

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At this point we believe the provisions of Section 121.070, RSMo 1953 Cumulative Supplement, particularly Subsections 1 and 3, become germane to this portion of your inquiry. These portions of the statute read as follows:

"1. The election authority in jurisdictions adopting voting machines shall as soon as practicable thereafter provide for each polling place where voting machines are to be used, one or more machines, in complete working order.

* * *

"3. When not in use at an election the election authority shall have the custody of the machines."

Incidental to your inquiry and to anticipate a question which might arise in the future with respect to the delivery and installation of such voting machines we at this point direct your attention to the provisions of Subsection 1 of Section 121.080, RSMo 1953 Cumulative Supplement, reading as follows:

"1. It shall be the duty of the election authority in such counties to have the voting machine and all necessary furniture, equipment, records and supplies, at the polling places before the fixed time for the opening of the polls, and have the counters, if any are provided, except the protective counter, on the machines set at zero (000), and otherwise in good and proper order for use at such election."

This portion of the statute mentioned places the duty of the delivery and installation of the voting machines at the polling places directly upon the Board of Election Commissioners, particularly, when read in conjunction with Subsection 3 of Section 121.070, quoted supra.

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From the foregoing we arrive at the conclusion that the duty has been enjoined upon the Board of Election Commissioners to select the voting machines to be used in the conduct of elections within the election district. It is, of course, elementary that the selection of a particular type of machine must be governed by the exercise of the sound discretion of the Board of Election Commissioners based upon substantial evidence indicating that the selection of the particular type of machine is in the best interest of the people and is a more appropriate machine than those of any other type or types.

We think this conclusion to be reasonable upon consideration of the entire scheme for the conduct of elections within the geographical area of the election district within which your Board of Election Commissioners functions. The entire act discloses an intent on the part of the General Assembly that complete supervision and control of registration and balloting be vested in your body and it necessarily must follow that no construction of the statutes relating to the conduct of such elections must be indulged in which might serve to limit or unduly restrict the discharge of such duties so enjoined upon your body.

What we have said heretofore relates merely to the determination of the necessity in the selection of the appropriate type of voting machine. After having made such determination the formal acquisition thereafter must follow the procedure established for the acquisition of all other supplies and equipment for the various departments of county government. Inasmuch as we have discussed this at some length under II, supra, we will not unduly lengthen this opinion by a repetition of what was said therein.

CONCLUSION

In the premises we are of the opinion,

(1) That it is the duty of the county council of St. Louis County to provide such office furniture, equipment and supplies for the operation of the office of the Board of Election Commissioners of said county as may be reasonably necessary, such purchases to be made following the procedures established by ordinance of the county council pursuant to the provisions of Paragraph (6), Section 22 of Article III of the Charter for St. Louis County;

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(2) That it is the duty of the Board of Election Commissioners of St. Louis County to select, determine and provide for the acquisition of such election supplies, equipment and services as may be necessary to discharge the duties imposed upon such Commission, and that such acquisition is to be made in accordance with the procedures established under Paragraph (6), Section 22, Article III of the Charter for St. Louis County, and,

(3) That it is the duty of the Board of Election Commissioners of St. Louis County to determine in the exercise of its sound discretion the appropriate type of voting machines to be used in the conduct of elections within such county and that such voting machines are to be acquired in accordance with the procedures established pursuant to the provisions of Paragraph (6), Section 22, Article III, Charter for St. Louis County.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Will F. Berry, Jr.

Very truly yours,

JOHN M. DALTON
Attorney General

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