

ELECTIONS: (1) Bipartisan committee provided in Section 121.220, RSMo 1953 Cum. Supp., may not delegate its duties to subcommittees; (2) Central committee of two principal political parties may provide for attendance of representatives at inspection and examination of voting machines for use in election, under Section 121.080, RSMo 1953 Cum. Supp.; (3) Regular staff employees of St. Louis Board of Election Commissioners may be appointed to serve on bipartisan committee provided for in Section 121.220, RSMo 1953 Cum. Supp.

FILED
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February 11, 1955

Honorable Michael J. Doherty, Chairman
Board of Election Commissioners
for the City of St. Louis
208 S. Twelfth Boulevard (2)
St. Louis, Missouri

Dear Sir:

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

"The Board of Election Commissioners directed the undersigned to request an opinion of your office concerning the following: Chapter 121 and Sections 121.080 and 121.220 R. S. Mo., 1949, as amended, which said Sections present some questions that may need clarification:

"(a) Can the bi-partisan committee be made so as to function separately in each of the 28 wards, and going further, in each of the city's 783 precincts, or must the committee be obliged to function city wide only and not separate units in each ward or precinct. MUST THE BI-PARTISAN COMMITTEE APPOINTED PURSUANT TO LAW ACT AS A SEPARATE AND DISTINCT UNIT, OR CAN THE BI-PARTISAN COMMITTEE SO APPOINTED DELEGATE AND APPOINT SEPARATE SUB-COMMITTEES SO THAT EACH SUB-COMMITTEE MAY ACT AS A UNIT IN ANY ONE WARD OR WARDS, OR IN ANY ONE PRECINCT OR PRECINCTS.

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"(b) This also applies to the chairman of two major parties being afforded the opportunity to inspect and examine each and every machine before it is made ready for each election - again can this committee be made so as to function as separate sub-units in each of the 28 wards or separate precincts, or be obliged to function city wide as one unit only. MUST THE CHAIRMEN OF THE TWO MAJOR PARTIES ACT AS A SEPARATE AND INDEPENDENT UNIT, OR CAN THE CHAIRMAN OF THE TWO MAJOR PARTIES APPOINT SUB-CHAIRMEN TO ACT IN ANY ONE WARD OR WARDS, OR IN ANY ONE PRECINCT OR PRECINCTS.

"(c) Can any of the regular staff of the Board of Election Commissioners with equal representation of the Democratic and Republican Parties Serve on the bi-partisan committee.

* * * * *

A.

With respect to the first question you have proposed, your attention is directed to the provisions of Section 121.220, RSMo 1953 Cum. Supp., reading, in part, as follows:

"1. At the time the canvassing board convenes or as soon thereafter as it can conveniently do so, and before canvassing the returns made by precinct election officials, after each election, a bipartisan committee appointed by the election authority, shall in each precinct using voting machines, make a record of the number on the seal and the number on the protective counter, if one is provided, of each voting machine used in each election precinct in the aforementioned elections, shall open the counter compartment of each such machine and without unlocking the machine against voting, shall canvass the vote cast thereon. No person who was a candidate at such election shall be appointed to membership on the committee. The said committee shall during such time, make a canvass of independent ballots delivered

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to the election officers. Before making such a canvass the committee, with respect to each machine to be canvassed, shall give notice to the chief custodian of voting machines, to the recognized chairman of the chief managing committee of each party or independent body in the city which shall have nominated candidates for the election, of the time and place where such canvass is to begin, and the recognized chairman of the chief managing committee of each such party or independent body in any such city may send representatives to be present at such canvass, who shall each have the right personally to examine and make a copy of the vote recorded on the machine."

The term "canvassing board," as used in the statute mentioned, refers to the Board of Election Commissioners of the City of St. Louis. To this effect, see Section 118.590, RSMo 1949, reading, in part, as follows:

"Within eight days after the close of such election, the board, which is hereby declared the canvassing body of such city, shall publicly open all the returns left with the election commissioners * * *"
(Emphasis ours.)

One further statute we think pertinent to the inquiry now being made appears as paragraph 3 of Section 121.070, RSMo 1953 Cum. Supp., reading as follows:

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

It is a principle of law that in the absence of a statute authorizing the redelegation of authority, administrative officers may not so redelegate authority to other persons for the purpose of having the duties of such official discharged. The maxim is phrased "delegata potestas non potest delegari." We think the maxim is particularly applicable in the present circumstances, as it appears that the bipartisan committee appointed has important duties to discharge in verifying the returns of election made by precinct canvassers to the Board of Election

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Commissioners through the medium of comparison of such returns with the count actually disclosed by the voting machines. We therefore believe that such authority may not be redelegated by the bipartisan committee and that the General Assembly contemplated that such committee personally discharge the duties imposed upon it.

We anticipate that no undue burden will be cast upon such bipartisan committee by following the procedure outlined, inasmuch as under the custodial power which the Board of Election Commissioners has, the voting machines no doubt will be assembled at some central location for storage immediately after each election. The committee will have access to the voting machines so centrally located and the canvassing thereof should entail no extended period of time or no great amount of labor.

B.

With respect to the second question you have proposed, we direct your attention to the provisions of Section 121.080, RSMo 1953 Cum. Supp., reading, in part, as follows:

"3. Before preparing a voting machine for any election at which candidates for more than one political party are to be voted upon, or at which amendments or questions are submitted for vote, written notice shall be mailed to the chairman of the local committee of each of the two principal political parties which at the general election next preceding, cast the highest and next highest number of votes, stating the time, and place where the machines will be prepared, at which time one representative of each such political party shall be afforded an opportunity to see that the machines are in proper condition for use at the election."
(Emphasis ours.)

It is apparent that the emphasized portion of the statute does not contemplate the personal attendance of the chairman of each of the major political parties, although the attendance of such chairman is not precluded. It appears that the purpose of the statute is to afford an opportunity to each of the two principal political parties to observe the voting machines prior to their use in the elections in order to ascertain that they are in condition to function properly. The selection of

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such representatives, we believe, is left to the discretion of the central committees of such parties, leaving to such committees the power to determine the mode and manner of selection of such representatives.

C.

With respect to the third question you have proposed, we have carefully examined all of the statutes relating to the creation and functioning of the bipartisan committee referred to in Section 121.220, RSMo 1953 Cum. Supp. Aside from the requirement of bipartisanship, the only statutory restriction appears with respect to the membership thereof, in the language appearing in the statute quoted to the following effect:

" * * * No person who was a candidate at such election shall be appointed to membership on the committee. * * *"

In the premises, we can foresee no improper results flowing from the appointment as members of such committee of regular staff employees of the Board of Election Commissioners. We are particularly persuaded to this view by virtue of the provisions of Section 118.050, RSMo 1949, placing upon deputy election commissioners the duty, among others, of performing "all acts which the said board or any two members thereof shall direct," and Section 118.680, RSMo 1949, providing the penalty incident to the conviction of a felony for any employee or assistant of the Board of Election Commissioners falsifying or fraudulently making any return with respect to the election in which they serve.

CONCLUSION

In the premises, we are of the opinion:

(1) That the bipartisan committee provided under Section 121.220, RSMo 1953 Cum. Supp., may not redelegate its authority to a subcommittee for performance of the duties enjoined upon such committee;

(2) That the selection of the representatives to inspect and examine the voting machines prior to use in an election as provided by Section 121.080, RSMo 1953 Cum. Supp., is to be made by the central committees of the respective political parties, and that the chairmen of such committees do not have to personally discharge such duties of inspection and examination, but are not precluded from doing so; and

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(3) That members of the regular staff of the Board of Election Commissioners may be appointed to the bipartisan committee provided for in Section 121.220, RSMo 1953 Cum. Supp., provided that the requirement of bipartisanship in the membership of such committee be observed.

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

Yours very truly,

John M. Dalton
Attorney General

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