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like to point out that the title of Section 111.405 provides 'An Act providing that the state shall pay all election costs of any election wherein only a state-wide question is submitted.' It would seem to me that by virtue of the title of the section, plus the language above quoted, that the obligation of the state to appropriate the money and pay for such election is mandatory. Actually, if the Sixty-Eighth General Assembly appropriated the money for the election, there is no question but my inquiry here is directed to the situation that arises in the event such appropriation was not made."

Upon inquiry at the State Comptroller's office we have been informed that no funds have been appropriated by the Legislature to meet said election expenses, therefore, the discussion herein will be in regard to our construction of Section 111.405 RSMo Cumulative Supplement for 1953, page 168, and how such election expenses shall be paid. Said section reads as follows:

"That hereafter when a question is submitted to a vote of all of the electors throughout the state, and no other question is submitted for a vote at the same election, all costs of such election shall be borne by the state, and after audit by the state comptroller, the state treasurer shall pay the amounts claimed by and due the respective political subdivisions out of any moneys appropriated by the Legislature for that purpose."

In this connection and before proceeding further we also desire to call your attention to Section B of Senate Bill No. 3, which reads as follows:

"This Act is hereby submitted to the qualified voters of this state for approval or rejection at a special election which is hereby ordered and which shall be held and conducted on the 4th day of October, 1955, pursuant to the laws and constitutional provisions of this state applicable to general elections and the submission of referendum measures by initiative petitions and it shall become effective when approved by a majority of the votes cast thereon at such election and not otherwise."

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Section 111.405, supra, clearly states that when a proposition is submitted to all of the voters of the State, that is, on a State-wide basis, and no other question is submitted at the same election, all costs of holding the election shall be borne by the State. Nothing in this or any other statute indicates that it is the duty of the General Assembly to appropriate the necessary funds prior to the election, and apparently the time when the appropriation shall be made has been left to the discretion of the lawmakers. Logically an appropriation to take care of all costs of holding such an election could not be made until after the election has been held and each political subdivision of the State in which the election was held has sent in its claim for expenses. The Legislature would then be apprised of the total cost of the election and could make an appropriation for the exact amount of such costs.

As we construe Section 111.405, supra, the cost of holding a special election must be paid by a county or other political subdivision of the State in which the election is held. In other words, the costs of said election must be advanced by the political subdivision, and in the instance referred to in the opinion request it would be Jackson County. Afterwards the respective political subdivisions may make claim to the State Comptroller for reimbursement of all funds they have been required to advance to meet the expenses of the special election. The political subdivision will then be repaid out of any funds appropriated by the General Assembly for that purpose as provided by Section 111.405, supra.

You indicate that your county court has not anticipated, nor included the cost of holding the special election referred to in Senate Bill No. 3, (we assume you refer to the 1955 budget for Jackson County), as such cost was not known at the time the county court approved the budget. While we understand and appreciate the facts which did occur in setting up the budget, it is believed that insofar as the law is concerned, the fact that the election expense, (which the county must pay, or rather advance), is a valid obligation of the county, and is included in the budget by operation of law regardless of whether or not it has actually been so included. This principle has been held to be the law in Missouri upon numerous occasions, and this department has also given its opinion to Honorable W. D. Settle, Prosecuting Attorney of Howard County, upon March 10, 1949, in which the same principle was involved, and cases were

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cited in the opinion upholding said principle. The opinion held that when a special election was required to be held, in Howard County, even though no funds had been provided for the election expenses in the budget, the election must be called and the costs of same were included in the county budget by operation of law. We are enclosing a copy of that opinion for your consideration.

It is therefore our thought that Jackson County is required to pay the costs of holding the special election ordered by Section B, Senate Bill No. 3, even though such costs were not anticipated or actually included in the county budget at the time the county court approved same, but that said election costs are included in the budget by operation of law.

#### CONCLUSION

It is therefore the opinion of this department that Senate Bill No. 3 of the 68th General Assembly, relating to the appropriation of the State school money is by Section B of the act, ordered submitted to a vote of all the electors of the State for approval or rejection, under referendum provisions of the Constitution at a special election upon October 4, 1955. If no other question is to be voted upon at said election, the cost of same shall finally be borne by the State of Missouri, and each political subdivision of the State shall pay the cost of holding the election therein. Thereafter it will present its claim for reimbursement to the State Comptroller, who shall audit same. The State Treasurer is then authorized, under the provisions of Section 111.405 RSMo Cumulative Supplement 1953, to pay the amount claimed and found due each political subdivision, out of any moneys appropriated by the Legislature for that purpose.

The foregoing opinion, which I hereby approve, was written by my Assistant, Paul N. Chitwood.

Yours very truly,

JOHN M. DALTON  
Attorney General

JMC:mat:gm

Enclosure