

ELECTIONS:

ELECTION EXPENSES:

The same person may serve as a judge or clerk of a municipal bond election and at the same time serve as a judge or clerk of a special state referendum election, providing that such person is duly appointed by proper authority and can physically discharge the duties relating to both elections. Further, a county may recover from the state the expenses of conducting a special referendum election within the limits of a municipality where a municipal question is submitted to a vote at the same time and both elections are conducted by the same officials.



January 20, 1956

Honorable Frank D. Connett, Jr.
Prosecuting Attorney
Buchanan County
St. Joseph, Missouri

Dear Sir:

Reference is made to your request for an official opinion of this office, which reads as follows:

"I have been approached by the mayor of the City of St. Joseph, Missouri, as to the possibility of the City of St. Joseph holding a bond election pursuant to Sections 95.145, 95.150 and 95.155, RSMo 1949, on the same day as the State's special bond election, i.e., January 24, 1956.

"In order for this to be accomplished, it would be necessary for the city and county political committees of each political party to collaborate in the furnishing of lists of judges and clerks and for the St. Joseph City Council and Buchanan County Court to collaborate and appoint the same judges and clerks. This is necessary so that the County Clerk's registration books could be used in both elections. The judges of the election would then have to return to each clerk the proper ballots and tally sheets.

"My questions are these:

"1. Would such a procedure as outlined above be lawful?

"2. If such a procedure is lawful, would it prevent Buchanan County from recovering its costs of the state bond election from the State Treasurer as provided by Section 111.405?"

You first inquire as to whether the same persons may serve as judges and clerks of a special state referendum election and a city bond election when both elections are held on the same day.

We know of no constitutional or statutory provisions which would prohibit the holding of a city bond election on the same day as a special state referendum election. Nor do we know of any constitutional or statutory provision which would prohibit the same person from serving as a judge or clerk of a city bond election and at the same time serve as a judge or clerk of a special state referendum election, providing that such person was duly appointed by proper authority and could physically discharge the duties relating to both elections.

You next inquire if a county would be entitled to recover the costs of the state bond election under the provisions of Section 111.405 if a city election is held on the same day and the same persons serve as judges and clerks of election.

Section 111.405, RSMo Cum. Supp. 1953, provides 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."

Said section authorizes and directs the state to bear the costs of an election wherein a question is submitted to a vote of all the electors throughout the state and no other question is submitted for a vote at the same election. Said provision is clear and unequivocal in its terms. Your attention is invited to the title of said Act which provides: (Laws 1951, p. 832).

"AN ACT providing that the state shall pay all election costs of any election wherein only a state-wide question is submitted."

It is a familiar rule of statutory construction that the title of an act is essentially a part of the act and is, itself, an active expression of the general scope of the bill and therefore, it may be looked to as an aid in arriving at the intention of the Legislature.

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Hurley v. Eidson, 258 S.W. (2d) 607.

While we are convinced from the above noted act and title that the state would be precluded from bearing the expenses of an election where a local issue is submitted for a vote at the "same election", it must be determined here whether a municipal bond election held on the same day as the state special bond election and conducted by the same election officials duly appointed by both the county court and the city is, in fact, and in law the "same election" as contemplated by the Act. We believe that it is not. It would seem to be clear that if a municipality decided to hold a bond election, appointed its own election officials and designated its own polling places, the mere fact that it was held on the same day as a special state election would not make it the same election. In such an instance, and under such circumstances, the two elections are authorized and called by separate authority, present different issues (city and county), are conducted by separate officials and at different polling places. Now suppose that the call is for the same day, but that the city and county can and do agree upon, and appoint the same election officials, use the same polling places, and it is not otherwise physically impossible for the same persons to discharge the duties of election officials in regard to both elections. Is such any different than the first instance? The elections are not the same merely because they are conducted by the same officials for said persons are acting in a dual capacity, duly appointed by proper authority of the city and of the county with separate responsibilities and duties to each.

It is our opinion that the holding of a city bond election on the same day as a state special bond election, under the procedure you have outlined, would not prevent the county from recovering the expenses of the state bond election as provided by Section 111.405, RSMo 1953.

CONCLUSION

It is, therefore, the opinion of this office that the same person may serve as a judge or clerk of a municipal bond election, and at the same time serve as a judge or clerk of a special state referendum election, providing that such person is duly appointed by proper authority and can physically discharge the duties relating to both elections.

We are further of the opinion that the holding of a municipal bond election on the same day as a special state referendum election

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would not prevent the county from recovering the expenses of the state referendum election from the state as provided in Section 111.405, RSMo 1953.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Mr. Donal D. Guffey.

Yours very truly,

John M. Dalton
Attorney General

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