

July 8, 1963



Honorable Carroll J. Donohue
Chairman, Board of Election
Commissioners
St. Louis County
Clayton 5, Missouri

Dear Mr. Donohue:

You have requested on behalf of the Board of Election Commissioners of St. Louis County the opinion of this office with respect to the following:

The St. Louis County Council consists of seven members, each elected from a separate district. There is presently a need, if not a duty, to redistrict the council districts by reason of a disparity in population of the existing districts. Under the charter of St. Louis County, the authority to make changes in the boundaries of council districts is vested in the council itself. A member of the council, Honorable John O'Hara, has requested the Board of Election Commissioners to assist him in preparing a redistricting proposal to be submitted to the council for its consideration. The Board desires to know whether it has the right, power and authority under the law to render such advisory assistance.

The Board of Election Commissioners of St. Louis County is a bi-partisan body created by statute with four members all of whom must be "of approved integrity and capacity." The statutes impose numerous specific duties upon the Board including those relating to registering voters, conducting elections, and dividing townships into election precincts. Another mandatory duty imposed upon the Board both by the

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Constitution and the statutes is to divide the county into magistrate districts of compact and contiguous territory, as nearly equal in population as may be. In the performance of all of its specific and mandatory duties, the Board necessarily has acquired valuable information and data available to it and to the public and which undoubtedly would be very helpful in the creation of council districts which comply with the requirements of the Charter.

The real question, as we see it, is whether the Board of Election Commissioners of St. Louis County has the right and power to make available to a council member in a meaningful manner the information and data at the disposal of the Board. We are, of course, aware of the salutary principle that public officers have only such power and authority as are clearly conferred by law or necessarily implied from the powers granted, but a careful study of the cases makes it clear that such principle has application to situations where the officer attempts to bind authoritatively or otherwise legally affect the rights of the public or individual members thereof. In cases of that kind, a strict construction of the law is necessary and desirable. No comparable situation is here involved.

In our view, when the exercise of the authority is undoubtedly in the public interest, as here, and cannot adversely affect the legal rights of any person, and where the statutes contain no prohibitory language, a liberal construction of the law should be adopted.

The information and data in question are in the possession of the Board of Election Commissioners and clearly are subject to public inspection and use. In aid of such right of the public, it is our opinion that the Board may properly assist the public, including a member of the council, in making use of such information and data. To hold otherwise would mean that no public officer would have the right to make himself available to inform or assist the public or any member thereof. It would equally follow otherwise that no clerk behind the counter in any public office would have any right to make any constructive suggestions or give helpful information to any member of the public.

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CONCLUSION

We hold that the right, power and authority to make its information and data available in a meaningful manner and to render constructive suggestions with respect thereto, as here requested by Councilman O'Hara, may properly be exercised by the Board. Of course, in making its "know-how" available, the Board may not do so at a time or in a manner which would interfere with the performance of duties specifically imposed upon it by law.

Subject to such qualification, therefore, it is our opinion that the Board of Election Commissioners of St. Louis County has the right, power and authority, in its discretion, to give the requested advice and assistance in the preparation of a proposed council redistricting which will comply with the Charter requirement that the districts be "of contiguous territory as compact and nearly equal in population as practicable."

Yours very truly,

THOMAS F. EAGLETON
Attorney General

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