

REGISTRATION OF VOTER:
VOTER REGISTRATION:
COUNTY CLERKS:
CITY CLERKS:

A city clerk is not entitled to pay as deputy voter registration officer under Section 114.100, VAMS. The county clerk is required to furnish three registration cards to absentee voter.

OPINION NO. 76 (1966)
OPINION NO. 447 (1965)

March 22, 1966

Honorable William Pannell
Prosecuting Attorney
Jefferson County
Hillsboro, Missouri



Dear Mr. Pannell:

In your recent letter you requested an opinion from this office concerning voter registration in Jefferson County Missouri. One question you submitted is as follows:

"In Section 114.100 Deputy Clerks for registration (2) and (3) - compensated at the rate of \$10.00 a day for each day actually engaged in the performance of their duties. - Does this pertain to initial registration workers, or to the City Clerks.

The rate as set up by the previous Clerk was as follows, as the City Clerks take registrations on a daily basis:

City Clerk of De Soto	\$25.00 a month
City Clerk, Crystal City	25.00
City Clerk of Festus	30.00
City Clerk of Kimmswick	10.00

Is this arrangement of salary a legal charge for the County, or what provisions for payment are there, as surely, the County should not be obliged to pay at the rate of \$10.00 a day for the number of registrations taken in the cities. Should it be by actual registration - so much for each, or, since the above rates have been followed for the past years, should they remain."

Voters registration in Jefferson County is governed by Chapter 114, RSMo as amended. The above question involves an interpretation of Section 114.100, RSMo. Supp. 1965, enacted by the legislature in 1965 which reads in part as follows:

Honorable William Pannell

"1. The county clerk may appoint not more than two additional deputies who are in addition to those regularly employed in his office, to perform the necessary duties under this chapter, and whose salaries shall be fixed by the county court. The county clerk shall submit the names of the one or more deputies to the judge of the circuit court sitting in the county, who shall approve the appointment of the deputies before they enter upon the performance of their duties.

"2. The clerk of any city, town or village may be appointed by the county clerk as a deputy registration officer. Any clerk so appointed may accept registration of voters at their offices at any time that registration may be accepted by the county clerk, but registration shall not be accepted by these deputies at any other place.

"3. The county clerk may employ the extra deputies as are necessary, and they shall be compensated at the rate of ten dollars a day for each day actually engaged in the performance of their duties."

You inquire whether a city clerk appointed by the county clerk is to be paid at the rate of \$10.00 per day as provided under Paragraph 3, supra, and if not, how the city clerk should be compensated for his duties as deputy registration officer.

Under the above statute, a city clerk appointed under Paragraph 2, supra, is designated as "a deputy registration officer" and is required to accept registration of voters at any time that registration is accepted by the county clerk. Under Section 114.080, RSMo., a county clerk is required to accept registration of voters at all times the office is open for official business. Under Paragraph 3, supra, the deputies appointed by the county clerk under this provision are designated as "extra deputies" and they are to be compensated at the rate of \$10.00 a day for each day actually engaged in the performance of their duties. Section 114.090, RSMo. Supp. 1965, provides that the county clerk may designate additional places of registry in the county and is to place a deputy in charge.

It is elementary that the primary rule to be followed in the construction of statutes is to ascertain and give effect to the intent of the legislature. *Kasten v. Guth*, 375 S.W. 2d 110. In ascertaining the lawmakers intent, consideration is to be given to the words used and put upon the language used its

Honorable William Pannell

plain and rational meaning and to promote its object and manifest purpose of the statute. *Law Association of St. Louis v. City of St. Louis*, 294 S.W. 2d 676.

Applying these rules of construction mentioned herein it is our opinion that Paragraph 3 of Section 114.100, supra, is intended to apply only to extra deputies and that it does not apply to city clerks appointed as provided for under Paragraph 2 of such statute.

Since city clerks are not to be compensated as provided under Paragraph 3, the question arises as to how they are to be compensated for their extra duties as deputy registration officers.

A city clerk appointed as provided under Section 114.100, is a public officer. *Hastings v. Jasper County*, 314 Mo. 114.

It is a well settled principle of law that the right to compensation for the discharge of official duties by a public official must be provided for by statute or it does not exist, and any statute which is granted to confer such right must be strictly construed. *Felker v. Carpenter*, 340 S.W. 2d 696. This principle of law is stated in *State ex rel Forsee v. Cowan*, 284 S.W. 2d 478 1.c. 481 as follows:

"The law in Missouri is well established 'that the right of a public officer to be compensated by salary or fees for the performance of duties imposed on him by law does not rest upon any theory of contract, express or implied, but is purely a creature of the statute. *Gammon v. Lafayette County*, 76 Mo. 675; *State ex rel. Evans v. Gordon*, 245 Mo. 12, 149 S.W. 638; *Sanderson v. Pike County*, 195 Mo. 598, 93 S.W. 942; *Jackson County v. Stone*, 168 Mo. 577, 68 S.W. 926; *State ex rel. Troll v. Brown*, 146 Mo. 401, 47 S.W. 504; *Bates v. City of St. Louis*, 153 Mo. 18, 54 S.W. 439, 77 AM.St.Rep. 701; *Williams v. Chariton County*, 85 Mo. 645. * * * *Maxwell v. Andrew County*, 347 Mo. 156, 146 S.W. 2d 621, 625. 'In so far as concerns compensation for services, there is a very imperfect analogy between services rendered by a public officer and those rendered by one individual to another in a private capacity. The law implies in the latter case a promise to pay as much money as the services are reasonably worth, whereas the compensation for services of a public

Honorable William Pannell

officer is in most cases fixed by positive law. If the fixed compensation is more than the service is worth, the public or party must pay it; if less, the officer must be content with it." 43 Am. Jur., sec. 362, p. 150.' Alexander v. Stoddard County, Mo. Sup., 210 S.W. 2d 107, 109. See also State ex rel. Harrison v. Patterson, 152 Mo.App. 264, 132 S.W. 1183."

* * * * *

"Now, the law is also clear that '[e]ven in the absence of statutory prohibition and even though the work or services consist of "extra services," if they are in point of fact a part of or germane to the official duties of his office, the officer's employment, for obvious reasons, is against public policy and he is not entitled to compensation for performing the services. Annotations 84 A.L.R. 936; 159 A.L.R. 606.' Polk Tp., Sullivan County v. Spencer, Mo. Sup., 259 S.W. 2d 804, 805. See also Tyrell v. Mayor, etc., of City of New York, 159 N.Y. 239, 53 N.E. 1111, 1112; 43 Am. Jur., 'Public Officers', § 363, p. 151."

We have been unable to find any statutory provision allowing a city clerk to be compensated from public funds for his services as a deputy registration officer.

We believe these cases are authority for holding that a city clerk appointed as a deputy registration officer under Section 114.100, supra, is a public officer, that his services as a deputy registration officer are official duties placed on him by law and since there is no statutory provision for compensation to be paid by the county for such services, he is not entitled to be compensated for such services from county funds.

Another question you submit as follows:

"Regarding Section 114.060 - absentee or disability registration, our system now only entitles a person to vote an absentee ballot, as the triplicate registrations are not forwarded to the applicant, therefore their would be no

Honorable William Pannell

signature for an election judge to examine if he were to walk into a regular polling place.

However, Section 114.060 states *** shall on application state facts as to illness, disability or absence, the completed form (which we take would mean the application) shall be sworn to. **Upon filing the completed form, the applicant shall be deemed duly registered. However, if the actual triplicate registration form is not furnished to the applicant, and his signature placed thereon how can he be duly registered? By this, then, would it be permissible to mail the triplicate form to an absent or ill voter for his signature. If mailing is permissible, is it to apply strictly to absent or ill voters, or is it legal for the Clerk or Deputy to carry registration cards for ill persons."

Section 114.060, RSMo provides:

"Any person, who through illness, disability, or absence from the county, expects to be prevented from appearing at the place of registry or at the county clerk's office within the time for registration prior to a primary or general election shall on application, stating the facts as to his illness, disability, or absence from the county be provided with a form by the county clerk, to be filled in by the applicant, showing all data necessary for the registration records. The completed form shall be sworn to by the applicant before an officer authorized to administer oaths and shall be returned by mail or otherwise to the county clerk at least thirty days before any primary or general election. Upon filing the completed form as herein required, if in proper form, the applicant shall be deemed duly registered."

Under this section a voter who expects to be unable to register because of illness, disability or absence from the county is required to make a written application to the county clerk stating the facts as to his illness, disability or absence from the county. This application is not required to be under oath. It further provides that upon receipt of this application the county clerk is required to furnish the applicant with the proper registration forms to be filled in by the applicant showing the information necessary for registration.

Section 114.130, RSMo, provides for the procedure to be

Honorable William Pannell

followed when an elector offers to register. It requires the county clerk to provide the elector with three registration cards, one tinted pink, one blue, and one white. It further requires that these cards contain certain information as set out in the statute. It further provides the form of affidavit which must be signed and sworn to by the elector.

It is our opinion that when an elector who through illness, disability or absence from the county desires to register, the county clerk is required to furnish the elector with three registration cards in the form as required by Section 114.130, RSMo. These cards must be completed, signed and sworn to by said elector before an officer authorized to administer oaths and returned by mail or otherwise to said clerk at least 30 days before the election.

On February 24, 1966, we forwarded several opinions that have been issued by this office which we believe answered the other questions you submitted.

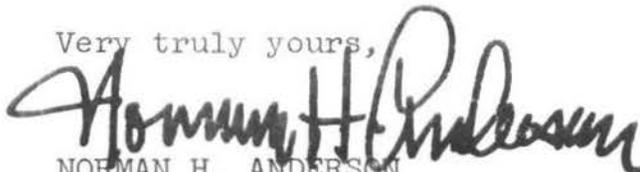
CONCLUSION

It is our opinion that:

1. Paragraph (3) of Section 114.100, RSMo Cum. Supp. 1965, does not apply to a city clerk appointed under Paragraph (2) of said section.
2. A city clerk appointed as a deputy registration officer under Paragraph (2) of Section 114.100, RSMo Cum. Supp. 1965, is not entitled to compensation from the county for his services as a deputy registration officer.
3. The county clerk is required to furnish an elector who expects to be unable to register because of illness, or absence from the county at the time of registration, with three registration cards in the form provided under Section 114.130, RSMo which cards are to be filled out, sworn to and returned by mail or otherwise to the county clerk at least 30 days before the election.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Moody Mansur.

Very truly yours,



NORMAN H. ANDERSON
Attorney General