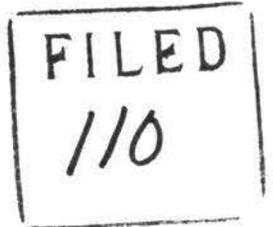


September 10, 1975

OPINION LETTER NO. 110  
Answer by Letter - Klaffenbach



Honorable Harold J. Esser  
State Representative, District 33  
3 West Glen Arbor Road  
Kansas City, Missouri 64114

Dear Representative Esser:

This letter is in response to your question asking which election laws relating to election judges and clerks apply to elections conducted by the Jackson County Board of Election Commissioners for a fourth class city of over 10,000 population and a six-director school district when such elections are held together.

Under Section 162.371, RSMo, the Jackson County Election Board does not conduct school elections in the usual sense. That section merely empowers the board to designate the polling place and appoint election officials within cities having joint elections with school districts. We are doubtful that the election board has authority to appoint election officials in school elections not held concurrently with municipal elections or school elections held outside municipal limits.

The contention has been advanced that Section 111.111, RSMo authorizes the Jackson County Election Board to conduct school elections when such elections are held the same day as municipal elections. We enclose Opinion No. 115, rendered March 13, 1974, to James C. Kirkpatrick. It is clear from such opinion that Section 111.111 has no application when a municipal election and a school election are held on the same day but no state or county election is held on such day. Further discussion in this letter will therefore be based on the provisions of Section 162.371 and the authority of the Jackson County Election Board under provisions of such section and the provisions of Chapter 113, RSMo.

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The Jackson County Election Board is created and receives its authority under Sections 113.490 to 113.870, RSMo. It is also given authority over concurrent school elections within municipal limits under Section 162.371. Under Section 113.560, RSMo, the board has authority to conduct "any and all elections in the county." However, Section 113.520, RSMo, clearly provides that such sections do not apply to "school elections." While the contention has been made that the exemption in Section 113.520 was originally intended to apply only to registration requirements, the exception is still clear and literally without ambiguity. In the absence of ambiguity, we must conclude that the legislature intended the exception relating to school elections to apply to all those provisions found in Sections 113.490 to 113.870, respecting registration and the authority of the election board. Therefore, literally, the election board has no authority over school elections not held concurrently with city elections or outside city limits.

It is our view that the election board cannot contract to conduct elections which it is prohibited by statutes from conducting.

Further, it is our view that in school elections not held concurrently with city elections and in election precincts outside city limits, judges and clerks are to be appointed by the board of education. We reach this conclusion because Section 162.371, relative to six-director school districts, authorizes the board of election commissioners to designate the polling place for both the school district and the municipality holding concurrent elections and to designate the election officials in each precinct to conduct the election for all the subdivisions involved but expressly provides that the board of education shall designate the polling places for voters who reside outside the corporate limits of the cities holding elections concurrent with the school district, and also clearly provides that the school board "shall appoint three judges and two clerks of election for each polling place designated by the school board."

The election board has authority and is required to appoint election officials in elections conducted by it under the provisions of Sections 113.630 and 113.650, RSMo. However, these provisions apply only to elections under Sections 113.490 to 113.870 and not to school elections under Section 162.371, except where there are joint elections within the municipality because such section expressly provides that their application is so limited.

It is also our view that where the election board appoints election officials in joint municipal and school elections within

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the city limits, the board is to appoint election officials under the provisions of Sections 113.490 to 113.870 because the provisions of Section 162.371, which apply to the appointment of judges and clerks appointed by the board of education, expressly apply only to the situation where the board of education makes the appointments, i.e., outside the city limits, and not to the appointment of election officials by the election board.

Election officials in municipal elections in cities of over 10,000 population are appointed as provided in Sections 113.490 to 113.870 under provisions of Section 113.530, RSMo.

We acknowledge and appreciate the views of other counsel in reaching our conclusions. It can readily be observed from the diversity of opinion however that the subject matter is one requiring legislative attention.

Very truly yours,

JOHN C. DANFORTH  
Attorney General

Enclosure: Op. No. 115  
3/13/74, Kirkpatrick