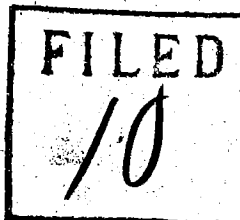


ELECTIONS:
BOARD OF ELECTION
COMMISSIONERS,
KANSAS CITY,
MISSOURI:
REFERENDUM ELECTION:

Kansas City Election Board has right and
duty to conduct special referendum election
in that part of Clay County purportedly
annexed to Kansas City.

February 20, 1950

2/20/50



Board of Election Commissioners
Kansas City, Missouri

Attention Mr. Elmo B. Hunter and Mr. W. Raymond Hedrick,
Attorneys.

Gentlemen:

This is in answer to questions two and three of your
letter of recent date requesting an official opinion of
this department, reading as follows:

"2. There is a further question as to
whether the Kansas City, Missouri Election
Board should set up polling places in
the new annexed territory in Clay County,
which became a part of the city on Jan-
uary 1 of this year. As you know, the
Supreme Court has not made a final de-
cision upon this matter, and probably
won't until after the April 4 election.

"3. The Board wishes advice as to
whether there is any legal duty upon it
to treat the purported annexation as
being valid and to provide the residents
in the purported annexed territory with
an opportunity to register and to vote
in the City of Kansas City, Missouri."

In the case of State of Missouri ex inf J. E. Taylor,
Attorney General, ex rel Kansas City, Missouri v. City of
North Kansas City, No. 40216, now pending in the Supreme
Court of Missouri, the following motion for order to restrain
relator from exercising municipal control over territory
sought to be annexed was filed by intervenors November 8,
1949:

"Now come the Intervenors by their attorneys
and move the Court to make an order restrain-
ing the Relator from taking charge of the
land in Clay County, Missouri sought by it

to be annexed and from exercising municipal control and authority over the same until the final decision of this Court, upon the validity of said annexation for the following reasons:

"1. It appearing that the ordinance alleged to have been passed by the Relator provides that Relator will take charge of the territory sought to be annexed on January 1, 1950 and because Relator has joined in this proceeding and has acknowledged that there is a question as to the validity of said ordinance and has agreed that its validity may be determined by this Court, any taking charge of said territory or any exercise by it of municipal authority of said territory would be premature.

"2. That the taking over of said territory and the enforcement of its municipal ordinances and the rendition of any municipal service within said territory and the assessment of any taxes thereon would immediately result in confusion and conflict of authority and hardship to the inhabitants of said territory and would be without statutory authority therefor.

"3. That the Relator, Respondent and Interveners having joined issue on the matters set forth in their respective pleadings are all subject to the orders of this Court and that each of them should be restrained from exercising any authority or from performing any duties that are inconsistent with the position which each occupied prior to the commencement of this litigation.

"4. That it appears from the pleadings that Respondent has been restrained by an order of this Court from taking charge of the territory it sought to annex and from exercising any municipal authority and control over said territory.

"WHEREFORE, the Interveners pray the Court to order that Relator be restrained from taking charge of the territory it seeks to annex and from exercising any municipal

authority over the same and to prevent the rendition of any municipal service or to create any lien or exact any license fees or taxes from the territory described in the pleadings pending the final determination of this cause."

Suggestions in opposition to this motion were filed by relator and read in part as follows:

"The motion of Interveners should be denied. The Relator, in compliance with what it conceives to be its public duty, for some time has been and is now making extensive and detailed preparations to render municipal services in the annexation area, beginning January 1, 1950. Said services would include fire protection, police protection, street repairing, traffic regulations, hospital and health service, sanitary services, garbage collection, and all other municipal services not involving capital improvements, and unless restrained by this Court it will proceed to render such services beginning January 1, 1950."

The motion to restrain relator from exercising municipal control over territory sought to be annexed was overruled by the Supreme Court December 12, 1949. We believe that the effect of the overruling of such motion by the Supreme Court of this state constitutes a holding by such court that until such time as the court rules on the case now pending before it, Kansas City has the right and privilege of exercising control over that part of Clay County purportedly annexed to Kansas City.

We believe, therefore, that laws applicable to Kansas City are applicable to that part of Clay County purportedly annexed to Kansas City as of January 1, 1950, until such time as the court rules against such city's contention. The election laws found in Article III, Chapter 76, Revised Statutes of Missouri Annotated, therefore, we believe, are applicable to that part of Clay County purportedly annexed to Kansas City, and authorize the Kansas City Election Board to take charge of and hold the elections in that part of Clay County purportedly annexed to Kansas City.

The Quo Warranto suit now pending in the Supreme Court will decide whether or not the purported annexation by Kansas

City of a certain portion of Clay County was valid and the decision of the Supreme Court will relate back to January 1, 1950, the date upon which the annexation took effect, if such annexation was valid.

Section 12099(A), Laws of Missouri, 1945, p. 875, provides as follows:

"In all cities which have or may hereafter have a population of not less than 300,000 inhabitants nor more than 700,000 inhabitants, the board of election commissioners of such city may, within seventeen months after each presidential election, and shall in the case of the extension of territorial limits by annexation, within sixty days after the effective date of any such annexation, revise, rearrange, redistrict and divide said city into not less than sixteen nor more than twenty districts to be known as wards. These districts or wards shall be so located that the number of registered voters in none of said districts or wards shall, as shown by the registration of voters for the presidential election next preceding said redistricting or division, exceed that of any other district or ward by more than twenty-five per cent, and they shall be of contiguous and compact territory, consecutively numbered, and be substantially in the same position as formerly in such city or cities in so far as the same may be practicable. These districts or wards shall be so arranged, divided or districted that no voting precinct shall be located in more than one district or ward. The terms of all persons holding public office to which they have been elected from existing wards at the time that such redistricting becomes effective, shall not be vacated or otherwise affected thereby."

Since the positive duty is placed upon the Board of Election Commissioners of Kansas City to revise, rearrange, redistrict and divide such city within sixty days after the extension of its territorial limits by annexation, we believe it would be the duty of the Election Board of Kansas City to conduct the election within the territorial limits of the

Board of Election Commissioners

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entire city, including that part of Clay County purportedly annexed to Kansas City, since such annexation, if valid, took place January 1, 1950.

We do not in any way rule upon the validity of the purported annexation by Kansas City of a portion of Clay County, but hold only that until such time as the Supreme Court rules in the case before it relative to such purported annexation, that the Election Board of Kansas City has the right and duty of conducting elections in such purportedly annexed territory.

CONCLUSION

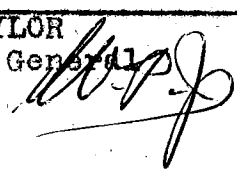
It is the opinion of this department that it is the right and duty of the Election Board of Kansas City, Missouri, to hold and conduct the special referendum election of April 4, 1950, in that part of Clay County purportedly annexed to Kansas City January 1, 1950.

Respectfully submitted,

C. E. BURNS, JR.
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General



CBB:lrt