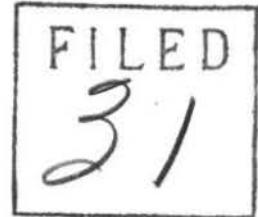


Elections: Absentee votes to be counted by four disinterested persons appointed by the county clerk and either two justices of the peace or two members of the county court.

January 26, 1944



Honorable Robert H. Frost  
Prosecuting Attorney  
Clinton County  
Plattsburg, Missouri

Dear Mr. Frost:

This will acknowledge receipt of your letter of December 21, 1943, in which you request an opinion of this department. This opinion request, omitting caption and signature, is as follows:

"Will you please give me your written opinion on the following question

"Who is charged with the duty of appointing the four disinterested persons to open, canvass, count and certify the votes cast by absent voters in counties such as Clinton."

In answer to your question we first wish to cite you to Section 11476, R. S. Mo. 1939, which provides as follows:

"In cases of elections wherein the county court or board of election commissioners, as the case may be, or not by law charged with the duty of canvassing the returns of such elections, the body or officials, charged by law with such duty for such elections, shall appoint the four disinterested persons to open, canvass, count and certify the votes cast by absent voters at such election, and the provisions of this article, in so far as applicable thereto, shall apply and govern in such elections."

It will be noted that in the above cited section of the statute two words are underscored, such words being "or not." From a reading of the statute it is readily apparent that such phraseology is a mistake or a misprint and if read exactly the way it is in the statute the meaning of such statute is not clear. We have traced this provision back to the Laws of 1933, at which time this section of the statute was first enacted, and find that in the official journals of the Senate that this provision read exactly the same as is quoted above. Therefore, in order for the meaning of this statute to be clear, we must endeavor to construe the meaning of the Legislature. We feel that the Legislature in enacting this provision meant that the word "or" should be "are" because it is apparent from reading this section that if the latter word is used the meaning of the statute is very clear. It would then provide that in cases of elections wherein the county court or the board of election commissioners; as the case may be, are not by law charged with the duty of canvassing the returns of such elections, the body or officials, charged by law with such duty for such elections, shall appoint four disinterested persons.

It is a familiar rule of law that "mere verbal inaccuracies or errors in statutes in the use of words, numbers, grammar, punctuation or spelling, will be corrected by the court whenever necessary to carry out the intention of the Legislature as gathered from the entire act. If the legislative intent is clear, it must be given effect regardless of inaccuracies of language." 59 C. J., page 991, Section 591. Such procedure was recognized and followed in the case of State ex rel. American Manufacturing Co., v. Koeln, 211 S. W. 31 (Mo. Sup.). Consequently, following such rule of law, we feel that after reading the entire section of the statute that the Legislature intended that the word "are" should have been placed in the statute instead of the word "or".

Therefore, it now becomes the question of whether the county court or the board of election commissioners are by law charged with the duty of canvassing the returns of the absentee ballots, or, if they are not, who should canvass such returns. Since this opinion pertains to counties such as the county of Clinton, we are naturally not concerned with any action on the part of a board of election commissioners, since

a board of this kind is non-existent in such counties. Consequently, the question arises as to whether the county court of Clinton County is charged with the duty of canvassing the returns of elections.

We further wish to call your attention to Section 11475, R. S. Mo. 1939, which is rather lengthy, and provides in part as follows:

"\* \* \* Whenever the county court of any county, or the board of election commissioners, as the case may be, shall meet to canvass the votes according to law they shall first appoint four disinterested persons from the two dominant political parties, not more than two of whom shall be of the same political faith, for the purpose of opening and counting said absentee vote, \* \* \*"

This section of the statute states that whenever the county court shall meet for the purpose of canvassing the ballots according to law they shall appoint the four disinterested persons about which you have requested an opinion. However, we have searched the statutes relative to elections and find at no place in the statutes of Missouri where the county court is required or authorized to meet for the purpose of canvassing the elections or casting up the ballots. Consequently, we feel that this provision as to the appointment of the four disinterested persons by the county court is of no effect, since there is no provision authorizing or requiring them to meet for that purpose. The statutes, however, do provide a way in which this shall be done, and do so in Section 11615, R. S. Mo. 1939. This statute provides the following:

"The clerk of each county court shall, within five days after the close of each election, take to his assistance two justices of the peace of his county, or two judges of the county court, and examine and cast up the votes given to each candidate, and give to those having the highest number of votes certificates of election."

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It is apparent from the above statute that it shall be the duty of the clerk of each county court to take to his assistance, which we feel means to designate, two justices of the peace of his county, or two judges of the county court, and to examine and cast up the votes given to each candidate, and after such is done to give a certificate of election to the candidates receiving the highest number of votes.

Returning to Section 11476, which we quoted above, we find that the county court is not charged by law with the duty of canvassing the returns of elections but that a certain body of officials is, to-wit, the county clerk and either two justices of the peace or two judges of the county court. In view of the fact that these men are charged with such duty, and not the county court, they then are empowered under Section 11476, supra, to appoint four disinterested persons to open, canvass, count and certify the votes cast by the absent voters at any election.

This department's former opinion on this question to Mr. Emory C. Medlin, dated May 17, 1938, is withdrawn.

#### Conclusion

Therefore, it is the opinion of this department that it is the duty of the county clerk and either two justices of the peace of the county, or two members of the county court, as is provided by Section 11615, supra, to appoint the four disinterested persons to open, canvass, count and certify the votes cast by absent voters in counties such as Clinton County.

Respectfully submitted,

JOHN S. PHILLIPS  
Assistant Attorney-General

APPROVED:

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ROY McKITTRICK  
Attorney-General

JSP:EG