

ELECTIONS :
BOARD OF ELECTION COMMISSIONERS:
COUNTY COURT:
SCHOOLS:
MUNICIPALITIES:

Construction of Sec. 111.255, RSMo,
Cum. Supp. 1957, providing for one
polling place and one set of election
officials where two elections are
being held in the political sub-
division on the same day.



March 10, 1958

Honorable Edward W. Garnholz
Prosecuting Attorney
St. Louis County
Courthouse
Clayton, Missouri

Dear Sir:

This is in response to your request for an opinion, which
reads as follows:

"It is respectfully requested that your
office furnish us with an Attorney
General's ruling on the following ques-
tions pertaining to school elections
relating to Senate Bill 305 which was
made law by the 69th General Assembly,
and which has been requested by the
County Superintendent of Schools.

"1. The meaning of the words 'whenever
feasible'. Can the law be interpreted
to mean that it may be 'feasible' that
some of a school district's polling
places must be established in conjunc-
tion with a municipality's polling
places and that additional polling
places must be established by the dis-
trict for other areas in which joint
polling place is not feasible.

"2. Who determines who would be in
charge of the elections when an election
is held in a school district, fire dis-
trict, water district, and/or cities and
villages?

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"3. What is meant by the provision that the body or official who has authority over 'general elections' in the political subdivision shall be the one who handles the election?

"4. What are the responsibilities of the St. Louis County Board of Election Commissioners under the provisions of this law when the only duty of that board in the April election is to prepare the registered voter lists for municipalities with populations in excess of five thousand?

"5. Who will pay the officials of election and how will the number of officials at each polling place be determined?

"6. If a joint election is held in a situation such as that which exists in the Normandy School District, is the School District required to furnish election officials for that part of a municipal ward or precinct within its boundaries and then provide separate polling places for the unincorporated areas in the district?

"7. What person or classes of persons are guilty of a misdemeanor in the event the provisions of the law are not followed?"

Senate Bill No. 305 of the 69th General Assembly, to which you refer, now Section 111.255, RSMo, Cum. Supp. 1957, reads as follows:

"Notwithstanding any other provisions of law, whenever any primary, general or special elections, or elections held by any school district, fire protection district, sewer district, municipalities, or other political subdivision of the state, are held upon the same day in any political subdivision, one polling place for the several elections in each precinct, consolidated precinct or district in the political subdivision shall whenever feasible be designated by the county clerk,

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board of election commissioners, or other proper election official, having authority over general elections in the political subdivision and the election officials in the polling places shall be designated by the county clerk, board of election commissioners or other proper election official and shall be compensated for one election only. Any person failing or refusing to comply with the provisions of this section is guilty of a misdemeanor."

The primary rule in the construction of statutes is set out in *A. P. Green Fire Brick Co. v. Missouri State Tax Commission*, Mo. Sup., 277 SW2d 544, 545:

"The primary rule of construction of statutes is to ascertain the lawmakers' intent, from the words used if possible; and to put upon the language of the Legislature, honestly and faithfully, its plain and rational meaning and to promote its object, and "the manifest purpose of the statute, considered historically," is properly given consideration.' *Cummins v. Kansas City Public Service Co.*, 334 Mo. 672, 66 S.W. 2d 920, 925. * * *"

Prior to the enactment of this law, it was generally accepted that the same persons might serve in a dual capacity and act as judges for two elections held on the same day in the same polling place, provided they met the qualifications of judges in both elections, but there was no requirement that this be done. It was also established that they were entitled to be compensated separately for both elections. See opinion of Attorney General to Stewart E. Tatum dated April 1, 1953, and Charles W. Medley dated April 7, 1955, copies enclosed. Consequently, in many instances elections were conducted by two political subdivisions having sometimes roughly, and often exactly, coextensive geographical boundaries with separate polling places, separate judges and duplicate expenses. It is the obvious purpose of this act to require that "whenever feasible" elections under such circumstances be conducted in the same polling places with the same election officials, to be compensated for one election only.

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Under ordinary circumstances, of course, when an election is being conducted by a political subdivision of the state, the governing body of the political subdivision, e.g., in the case of a school district the board of directors, in the case of a fourth class city the board of aldermen, etc., designates the polling places and appoints the judges of election. Under this bill, however, it is provided that, notwithstanding any other provision of law, if it is feasible to have one polling place and one set of election officials for two elections being held in a political subdivision on the same day, the polling places and the election officials shall be designated by the county clerk, board of election commissioners, "or other proper election official, having authority over general elections in the political subdivision." Although this latter phrase, "having authority over general elections," etc., modifying the phrase, "proper election official," occurs only in connection with the designation of the polling places, it must also be read into the act in regard to the designation of the election officials in order to make the act workable. State ex rel. and to Use of Tadlock v. Mooneyham, 212 Mo. App. 573, 253 SW 1098, 1100.

The term "general election" has been defined by statute and has an accepted meaning. Section 1.020, RSMo, Cum. Supp. 1957, provides, in part, as follows:

"As used in the statutory laws of this state, unless otherwise specially provided or unless plainly repugnant to the intent of the legislature or to the context thereof:

* * * * *

"(3) 'General election' means the election required to be held on the Tuesday succeeding the first Monday of November, biennially."

Consequently, we must look to the laws governing general elections to determine what official or body is meant to be vested with the authority to designate the polling places and the election officials. First, however, the question arises as to what the phrase "having authority over general elections" means.

Various officials perform various duties with regard to the conduct of elections. Logically, however, this phrase must mean those officials under the laws governing general elections

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having authority similar to that conferred by this act, i.e., the authority to designate polling places and election officials. Some confusion is created by the naming of the county clerk in this connection, because under no circumstances is the county clerk vested with the authority to designate polling places and election officials in any election. In most counties these duties are performed by the county court (see opinion of Attorney General to John R. Caslavka, January 21, 1952, copy enclosed), but in St. Louis County, for example, by the Board of election commissioners (§113.080 and 113.130, RSMo 1949).

Since, therefore, in St. Louis County the board of election commissioners is "the proper election official, having authority over general elections," that is the body which, under this act, is vested with the authority to designate polling places and election officials when two or more elections are being held on the same day in any political subdivision and it is "feasible" to have one polling place and one set of election officials for both elections. This latter statement answers your questions numbers 2 and 3 and partially answers your question number 4.

There remains, however, the meaning of the phrase "whenever feasible" and the question of who determines feasibility.

"Feasible" is defined in Webster's New International Dictionary, Second Edition, as follows:

"Capable of being done, executed, or effected; possible of realization; as, your plan seems feasible; hence, successful in operation."

It is apparent that, in order for this act to mean anything, someone must have the responsibility of determining whether it is "feasible" to have one polling place for two or more elections. The phraseology of the enactment that "one polling place * * * shall whenever feasible be designated by the * * * board of election commissioners," would seem to vest this authority in the board of election commissioners, which is logical since it has the duty of designating the joint polling places.

Therefore, in answer to questions numbers 1 and 6, and in further answer to question number 4, we conclude that the Board of Election Commissioners of St. Louis County must make the initial determination of the feasibility of using one polling place for two or more elections. Taking into consideration all

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the factors involved where the boundaries of a school district and a municipality overlap but are not coextensive, as in your questions numbers 1 and 6, it is conceivable that the board of election commissioners might decide that it is feasible to have joint polling places for part of the political subdivisions but not the remainder. If this occurs, the board of election commissioners will designate the election officials for the joint polling places, and in the remainder of a school district, for example, the board of education as the governing body of the political subdivision will designate the polling places and the election officials in the normal manner.

In answer to your question number 5, we must again indulge in certain presumptions because the act says nothing about the number of election officials to be appointed. The required number of election officials varies with the type of election being conducted. For example, under the general election laws the number of judges to be appointed depends upon the number of voters at the next to the last preceding election (§111.280, RSMo 1949), but not less than four for each precinct (§111.270, RSMo 1949). For general elections in St. Louis County, four judges and two clerks are to be appointed (§113.130, RSMo 1949). For certain special elections, only two judges and two clerks are required (§111.290, RSMo 1949). In six-director school districts, three judges are to be appointed and they in turn select two clerks (§165.330, RSMo, Cum. Supp. 1957). In many municipalities, the number required is fixed by city ordinance.

If one polling place is designated for two or more elections wherein the number of election officials required varies with the type of election or the political subdivisions involved, then as a practical matter, in order for this law to work, the greatest number of election officials necessary to have a valid election for any of the elections involved must be appointed. For example, if a special school election is being held in conjunction with a general election in St. Louis County, four judges and two clerks must be designated because that is the number required for a valid general election, although only three judges and two clerks are necessary for a school election.

The question of paying the election officials is much more difficult of determination. All this act says in that respect is that they "shall be compensated for one election only." We cannot presume that the act was meant to shift the burden of paying for the elections from the political subdivisions involved to any other body, yet there is nothing in

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the act specifying how much the election officials shall be paid or by whom. Prior to the effective date of this act, in those instances where the same election officials were used for two or more elections, the election officials were entitled to be compensated for each separate election by each of the political subdivisions involved, as is pointed out in the enclosed opinion to Stewart E. Tatum. The limitation of compensation was held to be that specified in Section 111.350, RSMo 1949 (amended Laws 1957, House Bill No. 22). However, even then it was not necessary that either of the political subdivisions involved pay the maximum compensation. At page 5 of the Tatum opinion, we said that "Each appointing body should determine what compensation is desirable and allowable for services performed in their election, and provide compensation accordingly."

The only change which Section 111.255, supra, purports to make in this procedure is to limit the election officials to the maximum compensation allowable for one election. In other words, the political subdivisions will still pay the election officials, but instead of paying them up to the maximum for each election the combined total compensation provided by the political subdivisions involved must not exceed that allowable for one election. This, of course, will require co-operation on the part of the political subdivisions involved and an agreement between them as to the compensation to be provided for each.

Your seventh question must be answered in general terms and by example. Those persons who would be guilty of a misdemeanor in the event the provisions of Section 111.255, supra, are not complied with are those persons who have some duty to perform under this act and fail or refuse to do so. For example, if under this act facts and conditions clearly require that the Board of Election Commissioners in St. Louis County designate one polling place and one set of election officials for two or more elections being held in a political subdivision on the same day, and they fail or refuse to do so, those so failing or refusing would be guilty of a misdemeanor. As a further example, if the board of election commissioners has designated one polling place and one set of election officials for two elections being held in the political subdivision on the same day and the governing body of the political subdivision involved fails or refuses to comply therewith, the members thereof so failing or refusing are guilty of a misdemeanor.

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CONCLUSION

It is the opinion of this office that under Section 111.255, RSMo, Cum. Supp. 1957, where two or more elections are being held on the same day in any political subdivision, it is the duty of the body having the authority to designate polling places and appoint election officials in general elections, e.g., in St. Louis County the board of election commissioners, to designate one polling place and one set of election officials for both elections if feasible to do so; that the feasibility of designating one polling place under such circumstances is to be determined by the body having the authority to designate the polling places, e.g., in St. Louis County the board of election commissioners; that the number of election officials to be appointed is the largest number necessary in order for each election being conducted to be a valid election; that the election officials are to be compensated by the political subdivisions involved in an amount to be agreed upon by the governing bodies of the political subdivisions, but the combined total of such compensation shall not exceed the maximum allowable for one election; and that those officials having some duty to perform in compliance with this act, failing or refusing to do so, are guilty of a misdemeanor.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, John W. English.

Yours very truly,

JOHN M. DALTON
Attorney General

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