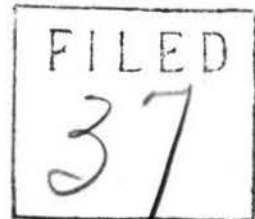


SUPPLEMENTAL OPINION TO OPINION 186. (ATTACHED)

**ELECTIONS:** In counties over 150,000 population having registration of voters county clerk prepares and delivers ballots.

June 1, 1940

Hon. John H. Hardin, Chairman  
Board of Election Commissioners  
Court House  
Independence, Missouri



Dear Sir:

This is written to supplement an opinion written by W. J. Burke, Assistant Attorney-General and furnished you under date of May 14, 1940. The purpose of this supplemental opinion is to clarify the matter of the printing of ballots in Jackson County, upon which you requested an opinion in a letter of April 5, 1940, the first two paragraphs of which opinion request are herein set out:

"Under date of March 30, 1938, your office gave to the Jackson County Board of Election Commissioners an opinion in which you stated that said Board of Election Commissioners, outside of Kansas City, Missouri, should publish notices of Elections and provide ballots and all other necessary supplies for Elections. This opinion was given by Mr. Harry H. Kay of your office.

"In a Conference with the County Clerk of this County today in regard to the necessary preliminaries for the Primary Election, the Clerk stated that he desired a more recent opinion on the point of printing ballots and supplies for said Election, and our understanding is that he is writing you today for such an opinion. If a new opinion is prepared and given we should be pleased to have you mail a copy to us at our office in Independence."

In the opinion of Mr. Burke there are a great number of the sections of the statutes pertaining to your problem set out. However, there are a few which were omitted therefrom. These sections do not change the conclusion, but a reading of them will add to your information on the subject.

Jackson County having a population of more than 150,000 the provisions for the appointment of a Board of Election Commissioners and a registration of voters and conduct of elections are found in Article 15 of Chapter 61, which is referred to in Mr. Burke's opinion. There are two sections, Section 10525 and Section 10536 R. S. Mo. 1929, which prescribe the duties of the Board of Election Commissioners pertaining to the conduct of elections. Section 10525 provides that the Board of Election Commissioners shall have power to conduct all elections and certify the returns thereof. Section 10536, in part, provides as follows:

"\* \* \* Said election commission shall make all necessary rules and regulations not inconsistent with this article in reference to the registration of voters and conduct of elections and shall have charge of and make provisions for elections, general, special, local, municipal, state and county or any part thereof at any time to certify the returns thereof to the proper officers issuing certificates of election."

These two sections would indicate that it was the intention of the Legislature that the Board of Election Commissioners would take charge of the registration of voters and the conduct of the election and do all things necessary. However, a careful reading of the entire article fails to reveal any direction to the Board of Election Commissioners to take charge of the printing and distribution of ballots. While this power might be implied from these two sections above mentioned, there is no provision made for furnishing to the Board of Election Commissioners the names of candidates and nominees to be printed on ballots. This apparent omission could not be supplied. In the case of *Dworkin v. Caledonian Ins. Co.*, 285 Mo. 342, 1. c. 363, the Supreme Court said:

"This court has declared: 'It is our duty merely to interpret it (a statute) exactly as made by the legislative department--we cannot properly add to it a meaning not intended by its terms.' (Henry & Coatsworth Co. v. Evans, 97 Mo. 1. c. 55.) The application of this rule is striking in what is called a casus omissus. The court may feel sure the Legislature meant to include something which by oversight was omitted, yet cannot supply it. (Kehr v. Columbia, 136 Mo. App. 1. c. 329; Smith v. State, 66 Md. 215; Woodbury v. Berry, 18 Ohio, 456.)"

Sections 10300 and 10302, found in Article 7, Chapter 61, R. S. Mo. 1929, are the general sections pertaining to the printing and distribution of ballots. Section 10300 directs the form of ballot and further directs the Secretary of State to certify to the various county clerks and Boards of Election Commissioners the names of candidates and nominees and party emblems. Section 10302 directs the distribution of ballots by the various county clerks and Boards of Election Commissioners. These sections would authorize the Board of Election Commissioners of Jackson County to take charge of the printing and distribution of ballots if they were applicable to Jackson County, but Section 10337, Article 7, Chapter 61, specifically provides as follows:

"The powers and duties herein given to and imposed upon the clerks of the county courts of the several counties shall be exercised in reference to the city of St. Louis and to Kansas City, and to any other city hereafter having a registration of voters by the board of election commissioners of such city."

It will be noted that this section expressly limits Section 10300 and Section 10302, to cities.

#### CONCLUSION.

It is the conclusion of this department that the Legislature, having failed to make proper provision for the

Hon. John H. Hardin

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June 1, 1940

Board of Election Commissioners to take over the printing and distribution of ballots, leaves the performance of that duty to the county clerk.

W. O. JACKSON  
Assistant Attorney-General

APPROVED:

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J. E. TAYLOR  
(Acting) Attorney-General.

WOJ:CP