

COUNTY: Compensation provided for two clerks of Board
COMPENSATION: Election Commissioners.
CLERKS OF BOARD
OF ELECTION COMMISSIONERS:



October 7, 1953

Honorable Stephen R. Pratt
Prosecuting Attorney
Clay County
Liberty, Missouri

Dear Sir:

This will acknowledge receipt of your opinion request which reads:

"I am writing you at the request of the recently appointed Election Board for Clay County, Missouri.

"I believe that Mr. Simrall talked to you on the phone in regard to the compensation for the Chief Clerks authorized under this Bill. Section 44 of the Bill provides for the employment by the Commission of two Chief Clerks, one democrat and one republican, and from the language of said provision it would appear that the legislation contemplated that these would be permanent employees.

"In Section 45 of said Bill it provides for the compensation of the Commissioners and 'Assistants and Clerks' employed by the day by the Board of Election Commissioners.

"I would like to have your opinion as to whether or not the compensation provision in Section 45 applies to Chief Clerks and if it does not, whether the compensation of said employees can be determined by the Board.

"I would appreciate having your opinion as soon as possible as it is quite important that this Board be organized and registration be started as soon as possible."

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The two particular statutes involved in your request are now known as Section 119.090 and Section 119.180, Vernon's Annotated Missouri Statutes, August, 1953. Section 119.090, supra, clearly provides that said Election Commissioners shall appoint two clerks of the Board who are required to give bond conditioned for the faithful performance of their duties, exercise supervisory control over office and clerical force appointed by the Commissioners, also that said clerks take and subscribe to the same oath as given to the Commissioners. Section 119.090, supra, reads:

"Such election commissioners shall appoint two clerks of the board, one from each of the two leading political parties, who shall hold office during the pleasure of such commissioners and shall each give bond to the state in the sum of three thousand dollars, with the security to be approved by said commissioners, conditioned for the faithful and honest performance of the duties of said office; and who shall exercise a general supervisory control and direction over the office and clerical force appointed by the commissioners, and be subject to such rules and regulations as the board may, from time to time, adopt as necessary to efficiently, promptly and carefully perform the duties of the office. Said clerks and employees shall be subject to the same restrictions and take and subscribe the same oaths as said commissioners, and shall file same together with their bonds as clerks with said commissioners."

Section 119.180, supra, fixes the annual salary of said Commissioners and fixes a daily maximum amount of salary for the clerks only employed by the day. Section 119.180, supra, reads as follows:

"In all counties in this state affected by this chapter, the board of election commissioners, clerks of the board, and all assistants employed by the board of election commissioners, except as otherwise herein provided, shall be paid as follows: The members of said board of

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election commissioners as such, and as members of the board of registry, as herein provided, shall each receive a salary of one thousand two hundred dollars per year, and assistants and clerks employed by the day by the board of election commissioners shall receive a salary of not more than eight dollars per day, and the same shall be paid upon a certificate of the board that the services have been rendered. All expenses incurred by the board of election commissioners shall be paid in like manner.

"2. In all elections embracing the whole county, the expenses specifically incurred for such election shall be paid by the county; in all city elections, the expenses specifically incurred for such elections shall be paid by the city."

The two foregoing statutes comprise a part of Senate Bill No. 5, passed by the Sixty-seventh General Assembly, and are the only provisions that relate to compensation for clerks of the Board of Election Commissioners.

Section 119.180, supra, is somewhat ambiguous in that it provides that the Board of Election Commissioners, clerks of the Board, (which refers to the two clerks in question) and all assistants employed by said Board except as otherwise provided herein, shall be paid as follows; then it fixes an annual salary for the members of said Board and following that provides that assistants and clerks employed by the day by said Board shall receive a salary of not more than eight dollars per day. No further provision as to the compensation for the two clerks of said Board is made. In view of the foregoing, it is evident that the Legislature was attempting to fix compensation for members of said Board, other officials and employees in adopting Section 119.180, supra.

Such clerks of the Board are, in all probability, not temporary appointments but more in the nature of permanent appointments. However, there being no other statute fixing compensation for said clerks, in view of the foregoing statute specifically providing that clerks of said Board except as otherwise herein provided shall be paid as follows; then fixed a maximum of eight dollars per day for only clerks employed by the day, we must conclude that it was the legislative intent that such clerks of said Board shall only be compensated as provided therein at a rate not to exceed eight dollars per day.

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Further support of this conclusion can be found in that rule of statutory construction that a public official claiming compensation for official duties performed must point out the statute authorizing such payment. *Nodaway County v. Kidder*, 344 Mo. 795, 129 S. W. (2d) 857. Also, that a right to compensation for the discharge of official duties is purely statutory and a statute that is claiming to confer such right must be strictly construed. *Ward v. Christian County*, 341 Mo. 1115, 111 S. W. (2d) 182.

CONCLUSION

Therefore, it is the opinion of this department that the two clerks of the Board of Election Commissioners, under Senate Bill No. 5, passed by the Sixty-seventh General Assembly, shall receive for services rendered an amount not to exceed a maximum of eight dollars per day for each day services are rendered as provided in Section 119.180, Vernon's Annotated Missouri Statutes.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Aubrey R. Hammett, Jr.

Very truly yours,

JOHN M. DALTON
Attorney General

ARH/mv