

- ELECTIONS:**
1. WPA officials and employees eligible to serve as judges and clerks of elections except in certain places.
  2. No penalty for persons serving as judges and clerks who are disqualified by reason of employment.
  3. Governor does not have control of election boards and election officials but may properly direct such election officials to execute the laws.

July 30, 1938



Hon. Lloyd C. Stark,  
Governor  
Jefferson City, Missouri

Dear Governor:

We are in receipt of your request of today, which request reads as follows:

"I would appreciate it if you will let me have today an opinion on the following questions.

"1. Do the Statutes of Missouri prohibit the use of WPA officials and employees as judges and clerks of Elections, including Primaries, in the State, and, if so, what penalties are provided for violations?

"2. What powers has the Governor to order Election Boards and other officials in charge of Elections to observe the Law with respect to the Primary Election on Tuesday, August 2nd."

Since your request does not state where it is proposed to use WPA officials and employees as judges and clerks of elections, we will set forth the qualifications of judges and clerks of elections in the various voting districts of the state.

Section 10287, R.S. Mo, 1929 provides in part as follows:

"The judges and clerks for primary elections held under this article shall be appointed in the same manner, and possess the same qualifications and consist of the same number as judges and clerks of general elections in this state:"

Section 10207, R.S. Mo. 1929 reads as follows:

"No person shall be qualified to act as a judge or clerk of any election unless he shall be legally entitled to vote at such election, and shall moreover be able to read and write. (R.S. 1919, Section 4777.)"

The foregoing qualifications would apply to judges and clerks in all voting precincts except those hereinafter specifically pointed out as being exceptions to the general rule.

Section 10571, R.S. Mo. 1929 sets out the qualifications for judges and clerks in elections held in cities containing 100,000 inhabitants or over. Said qualifications are therein set forth in the following language:

"Said board of election commissioners shall at least sixty days prior to the first city or state election after this article becomes a law, and at least sixty days prior to each presidential election thereafter select and choose four electors as judges of election, for each precinct in such city. They must be citizens of the United States and entitled to vote in the city at the next general election, and they must be men or women of good repute and character who can speak, read and

write the English language, and be skilled in the four fundamental rules of arithmetic, and they must be of good understanding and capable. They must either reside or be employed or have a place of business in the ward for which they are selected to act; and they must not hold any office or employment under the United States, the state of Missouri, or under the county or city in which such election is to be held, and they must not be candidates for any office at the next ensuing election. Two clerks of election for each precinct shall be selected within the same time by said board, and shall possess the same qualifications as the judges."

Section 10667, R.S. Mo. 1929 describes the qualifications for judges and clerks of elections in counties of 100,000 to 150,000 population. Said qualifications are set forth in the following language:

"Said board of election commissioners shall at least sixty days prior to the first presidential election after this article becomes a law, and at least sixty days prior to each presidential election thereafter, select and choose four electors as judges of election, for each precinct in such county. They must be citizens of the United States and entitled to vote in the county at the next primary or general election, and they must be men and women of good repute and character who can speak, read and write the English language. They must reside in the precinct for which they are selected to act; and they must not hold any office or employment under the United States, the state of Missouri, or under the county in which such election is to be held, and they must not be candidates for any office at the next ensuing election for any federal, state, or county office. Two clerks of election for each precinct shall be selected

within the same time by said board, and shall possess the same qualifications as the judges."

Section 5, p. 241, Laws of Missouri, 1937, sets forth the qualifications of judges and clerks of elections held in cities of 600,000 or over. Said qualifications are therein defined as follows:

"Said board of election commissioners shall at least sixty days prior to each presidential election thereafter select and choose four electors as judges of election, for each precinct in such city. They must be citizens of the United States and entitled to vote in the city at the next general election, and they must be men or women of good repute and character who can speak, read and write the English language, and be skilled in the four fundamental rules of arithmetic, and they must be of good understanding and capable. They must reside or be employed or have a place of business in the ward for which they are selected to act; and they must not hold any office or employment under the United States, the state of Missouri, or under the county or city in which such election is to be held, and they must not be candidates for any office at the next ensuing election. Two clerks of election for each precinct shall be selected within the same time by said board, and shall possess the same qualifications as the judges."

Section 7, p. 299, Laws of Missouri, 1937, sets forth the qualifications of judges and clerks in elections held in cities of 300,000 to 700,000 in the following language:

"Selection of judges and clerks-qualifications. Said board of election commissioners shall at least sixty days prior to the first city or state election after this article becomes a law, and at least sixty days prior to each presidential election thereafter, select and choose four electors as judges of election for each precinct in such city. They must be citizens

of the United States and entitled to vote in the city at the next general election, and they must be men or women of good repute and character who can speak, read and write the English language, and be skilled in the four fundamental rules of arithmetic, and they must be of good understanding and capable. They must either reside or be employed or have a place of business in the ward for which they are selected to act; and they must not hold any office or employment under the United States, the state of Missouri, or under the county or city in which such election is to be held, and they must not be candidates for any office at the next ensuing election. Two clerks of election for each precinct shall be selected within the same time by said board, and shall possess the same qualifications as the judges."

Section 6, p. 231, Laws of Missouri, 1935, describes the qualifications of judges and clerks of elections in counties of 200,000 to 400,000 population, in the following language:

"No person shall be qualified to act as judge or clerk of any registration or election unless he or she shall be legally entitled to register and vote at the next primary, special or general election held after the registration, and they must be men or women of good repute and character who can speak, read and write the English language. They must reside in the precinct for which they are selected to act, and they must not hold any office or employment under the United States, the State of Missouri, or under the county or city in which such election is to be held, and they must not be candidates, for any office at the next ensuing election for any federal, state, county, or township office or office in any city in said county containing more than ten thousand inhabitants. Being a notary public shall be no disqualification for judge or clerk. No person shall be appointed

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nor serve as judge or clerk in any election or registration who has been convicted of any offense punishable by imprisonment in the penitentiary, or who has been convicted and confined in any county jail, workhouse, penitentiary or house of correction within five years prior to such appointment."

It will be seen from the foregoing that an elector's occupation or employment does not enter into his qualifications to serve as judge or clerk of an election except in elections of cities of a population of 100,000, or over, in counties of more than 100,000 and less than 150,000 population, in cities of a population of 600,000 or over, in cities of population of 300,000 to 700,000 and in counties of 200,000 to 400,000 population. In the foregoing excepted cases, the law requires that judges and clerks of elections "must not hold any office or employment under the United States." Whether WPA officials are employees of the United States is a question of fact, but our information is that they are employees of the United States. If that be true, which we are assuming, such officials and employees would not be eligible to serve as judges and clerks of elections in the excepted cases above noted, but would be eligible in elections held in all other places in the state.

#### CONCLUSION

It is, therefore, the opinion of this office that WPA officials and employees are eligible to serve as judges and clerks of elections, including primaries, in all places in this state except the following: Cities of 100,000 population or over, counties of 100,000 to 150,000 population, cities of 600,000 population or more, cities of 300,000 to 700,000 population, and counties of 200,000 to 400,000 population.

#### II

Your next inquiry is as to whether there are any penalties provided for violations of the prohibitions against WPA officials



and employees serving as judges and clerks of elections.

We have not found any statute which prescribes a penalty for a person who is disqualified by reason of such employment from serving as judge and clerk of an election. Neither have we found any statute which prescribes a penalty against the appointing authorities who appoint such a person judge or clerk of an election when such person is disqualified by reason of employment from serving in such capacity.

#### CONCLUSION

It is, therefore, the opinion of this office that there is no penalty provided by law for persons serving as election judges and clerks who are disqualified by reason of being employees of the United States Government, nor is there any penalty provided against those who appoint persons thus disqualified, unless the Governor sees fit to exercise the power of removal vested in him by Sec. 1, p.326, Laws 1933.

#### III

Your next inquiry is as to what powers the Governor has to order election boards or officials in charge of elections to observe the law with respect to the primary election on Tuesday, August 2.

We do not find any specific statute giving the Governor any particular power in connection with the control of election boards or other officers in charge of elections as to the performance of the duties of such officers.

However, the Governor is by the provisions of Section 6, Article V of the Constitution of Missouri, charged with the duties of seeing that all laws are faithfully executed. Election laws are a part of the laws of the state, and, therefore, the Governor is charged with the duty of seeing that such laws are enforced. There is no inhibition against the Governor calling the attention of the election officials to the election laws and directing such officials to faithfully execute same.

Hon. Lloyd C. Stark

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CONCLUSION

It is, therefore, the opinion of this office that the Governor does not have any particular power to control election boards and other election officials in the discharge of the duties of their offices, but that there is no inhibition against the Governor directing such election officials to faithfully execute election laws.

Since your request for an opinion on the above matters reached us only today, we have been compelled to make a hurried examination of the law in order to comply with your request today. However, we believe the above correctly answers your questions.

Yours very truly

HARRY H. KAY  
Assistant Attorney General

APPROVED:

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J. W. BUNNINGTON  
(Acting) Attorney General

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