

ELECTIONS:
COSTS OF CANVASS OF
PRIMARY ELECTION IN
KANSAS CITY, MISSOURI :

The cost of a primary election canvass in Kansas City is a general expense which is to be paid both by Kansas City and Jackson County equally, as per statute. Section 117.140, RSMo Cum. Supp. 1957.

FILED

October 27, 1958

Honorable James L. Williams
County Counselor
Suite 202, Courthouse
Kansas City, Missouri

Dear Sir:

This will acknowledge receipt of a request for an opinion of this office by Assistant County Counselor, Louis Wagner, on the following question:

Is Kansas City liable for its proportionate share of the costs of an election canvass for the county primary election, where the canvass is being conducted by mail by the Kansas City Board of Election Commissioners rather than by judges of election, even though no city proposal or candidate is offered at such election?

We have examined the statutes pertinent to this question and it should be understood at the outset that we are dealing with one county, namely, Jackson County, and one election board, namely, the Kansas City Election Board. We would also point out that this question involves expenses of a primary election canvass at which officers throughout a whole county are nominated and not a general election canvass. We are not concerned about the expenses of a general city election canvass because the problem is not presented here.

We are of the belief that the answer to your question depends upon the application and construction of certain language contained in these two sections of Chapter 117, RSMo Cum. Supp. 1957. Section 117.140 of said Chapter reads:

"In all cities to which this chapter applies, the salaries of the election commissioners and board employees shall be paid one half by the city and one half by the county. The election commissioners shall each receive a salary of three thousand dollars per year, payable monthly. The members of the board

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designated as the chairman and the secretary, respectively, shall be paid an additional salary of six hundred dollars per year, payable monthly. The chief clerk employed by the board shall receive a salary to be determined by the board, but not less than four thousand dollars per year nor more than four thousand five hundred dollars per year, payable monthly; an assistant to the chief clerk, of the opposite political party of the chief clerk, shall receive a salary to be determined by the board, but not less than three thousand eight hundred dollars per year nor more than four thousand three hundred dollars per year, payable monthly; clerks, not exceeding six in number, shall each receive such salaries as the board may determine, but not less than three thousand four hundred dollars per year nor more than three thousand nine hundred dollars per year, payable monthly; additional clerks, not exceeding ten in number, shall each receive such salaries as the board may determine, but not less than three thousand dollars per year nor more than three thousand four hundred twenty dollars per year, payable monthly; and all additional clerks, if any, shall receive such salaries as the board may determine, but not less than eight dollars per day nor more than ten dollars per day while on duty. Compensation for overtime services necessarily and actually performed by any person employed at the office of the board may be paid at the rate of such employee's regular pay. Precinct judges shall receive as pay, eight dollars for each day or part of day while on duty, except pay shall be allowed only for those days mentioned in this chapter. All expenses incurred by said board of election commissioners and all costs and expenses of registration and election in such cities shall be paid one half out of the city treasury and one half out of the county treasury. (Emphasis ours.)

Section 117.170 RSMo Cum. Supp. 1957, reads:

"At all general, county, state or other elections which include officers elected throughout a whole county, although other than state or county

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officers are also elected, and at all special elections for a county or state officer or member of congress or member of the legislature, each such county shall pay the judges and clerks of election for their services under this chapter in connection with the election held within each such respective county, except that when such city submits any bond proposals, constitutional or charter amendments, or other propositions at any election provided by this section, the salaries of such judges and clerks of elections shall be paid one half out of the city treasury and one half out of the county treasury."

We would also call your attention to Chapter 117, supra, which provides for a Kansas City Board of Election Commissioners and prescribes their duties in some detail.

The Supreme Court of Missouri in a 1956 opinion was faced with the construction of the last two above-cited statutes in the case of Layson v. Jackson County, 290 S.W. 2d 109. The case arose out of a controversy between the Jackson County Board of Election Commissioners and the Kansas City, Missouri, Board of Election Commissioners as to whether Jackson County was obligated to pay the entire compensation of judges and clerks who served in the City of Kansas City at the November 4, 1952, general election or whether the county and city each was obligated to pay one-half. The court, in its decision, took notice of the fact that the statutes, Sections 117.140 and 117.170, supra, had been amended in 1955, which was after the controversy arose (1952), but stated in their opinion that the amendments only strengthened their 1956 decision.

The attorneys for Jackson County, in the Layson case, supra, argued that compensation of judges and clerks is an expense of the election and thus within the language of Section 117.140, supra, while Kansas City counselors contended that the election was a general election and, consequently, the pay of the judges was controlled by Section 117.170, supra. The court ruled as follows:

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"We bear in mind that these statutes relating to the payment of judges and clerks of election must be read in pari materia and, if possible, effect given to each clause and provision, *Davenport v. Testers*, Mo. App., 273 S.W. 2d 506, 510[1,2] * * *

* * * * *

"We have no difficulty in harmonizing the provisions of the above-quoted sections and in arriving at the conclusion that the provisions of Section 117.170 were applicable to the instant facts. We agree with the county that the language of Section 117.140 (i.e., the words 'expenses of * * * election'), standing alone, included the compensation of judges of elections and that there existed a seeming conflict between that section and Section 117.170 which specifically provided for the county to pay the expenses of the judges of election at all general elections. But when other relevant matters, including other sections of the same chapter of the statutes, are considered, we think that seeming conflict disappears.

"Section 117.050, provided for the creation of a board of election commissioners in Kansas City and, among other things, prescribed their powers and duties. Subsection 6 of Section 117.050 gave the board of election commissioners the power to make rules and regulations for 'the registration of voters and the conduct of elections'. (Our italics.) Section 117.250 provided that the board of election commissioners 'shall provide all necessary ballot boxes and all registry records, poll books, tally sheets, ballots, blanks and stationery of every description, * * * and other equipment necessary and proper for the registry of voters and the conduct of such elections * * *' (Our italics.) Those expressions, 'registration of voters' and 'conduct of elections', used in other sections of the same chapter considered in connection with the specific provision in Section 117.170 as to the payment of judges and clerks by the county, makes it likely that the language ('All expenses

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incurred by said board of election commissioners and all costs and expenses of registration and election in such cities') was intended to cover and provide for the payment of the expenses of election incident to the election board providing the equipment and paraphernalia in connection with registration of voters and the conduct of elections in Kansas City. In other words, it would appear that Section 117.140 provided for the payment of general expenses incident to the conduct of an election other than those expenses which were otherwise provided for in another section.

* * * * *

"We are of the opinion that the provisions of Section 117.170, as they existed in November 1952, were applicable to instant facts, and that therefore Jackson County was liable to pay the entire compensation for judges and clerks serving in Kansas City at the November 4, 1952, general election. It follows that the trial court correctly ruled that the warrants in question were valid and that plaintiff should recover their face amounts from defendant."

We believe the Layson case, supra, stands for the proposition that Section 117.140, supra, provides for the general expenses of an election in Kansas City, Missouri, to be paid one-half by the city and one-half by the county and that Section 117.170, supra, provides for the expenses of judges and clerks to be paid by the county exclusively in "all general, county, state or other elections which include officers elected throughout a whole county, although other than state or county officers are also elected, * * * except that when such city submits any bond proposals, constitutional or charter amendments, or other propositions at any election such judges and clerks of elections shall be paid one half out of the city treasury and one half out of the county treasury."

In view of the Layson decision, supra, the question then becomes just what type of expenses are the costs of a primary election canvass? It is our opinion that the costs of a primary election canvass are expenses involved in the "registration" and "conduct of an election" and are thus a general expense.

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We believe the above conclusion to be logically and reasonably sound. In Chapter 117, supra, Section 117.420, RSMo Cum. Supp. 1957, sets out the duties of the Kansas City, Missouri, Board of Election Commissioners regarding canvassing of the precincts, and reads:

"Immediately after the close of registration before each election preceding which a house to house canvass is required, the board shall have verification lists prepared for each precinct. Such list shall have the names and addresses of all voters registered in the precinct arranged in the same order as the precinct registers. A canvass shall be made before each general, state and county election, each state and county primary, each general city election."

The purpose of this canvass, we submit, is to verify the dwelling place of the voter with the address as listed on the official registration books of the Board of Election Commissioners. The canvass is thus a part of the registration and conduct of an election.

The court in the Layson case, supra, said that Section 117.140, supra, provided for general expenses to be paid one-half by the city and county unless the expense was otherwise provided for, and we quote (l.c. 111):

" * * * In other words it would appear that Section 117.140 provided for the payment of general expenses incident to the conduct of an election other than those expenses which were otherwise provided for in another section." (Our emphasis.)

We have examined Chapter 117, supra, in its entirety and we conclude that there is no statute or other provision which specifically provides for primary election canvass costs. Therefore, it is our official opinion that "canvassing of the precincts in the 1958 primary election" in Kansas City, Missouri, is part of the registry of voters and conduct of elections and thus embraced within Section 117.140, supra, and the cost of such canvass is a general expense and should be paid by the City of Kansas City and Jackson County equally.

Our position in this opinion is not changed or modified because the canvass was conducted by mail or that no city

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proposal or candidate was offered at such election. We direct your attention to Section 117.430, paragraphs 4 and 6, RSMo Cum. Supp. 1957, which specifically authorizes the Kansas City Board of Election Commissioners to conduct a canvass by United States mail. Paragraph 4, supra, provides, in part:

" * * * A canvass of all precincts or part thereof may be made by mail * * *."

Paragraph 6, supra, provides, in part:

"Before each election preceding which a canvass is required, the board shall have the authority to order said canvass made by any of the methods in this section, in its discretion, * * *."

We would further call your attention to Section 117.140, supra, and state that there is no requirement that a city proposal or candidate be on the ballot in order for the City of Kansas City to be obligated to pay their proportionate share of an election canvass because the last sentence of the above-mentioned statute reads as follows:

" * * * All expenses incurred by said board of election commissioners and all costs and expenses of registration and election in such cities shall be paid one-half out of the city treasury and one-half out of the county treasury."

CONCLUSION

It is, therefore, the conclusion of this office that the answer to your question is in the affirmative and that the costs of a primary election canvass in Kansas City are general expenses which are to be paid both by the City of Kansas City and Jackson County equally, as per statute, Section 117.140, supra.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, J. Burleigh Arnold.

Yours very truly,

John M. Dalton
Attorney General

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