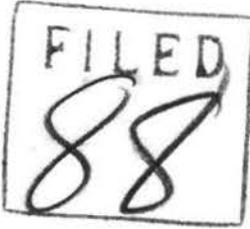


ELECTIONS:

JUDGES AND CLERKS:

Same persons may serve as judges and clerks of special election to fill vacancy in office of representative, municipal election, and election of school directors.



April 1, 1953

*See: opinion 32-1958
March 10, 1958 to
Larnholz.*

Honorable Stewart E. Tatum
Prosecuting Attorney
Jasper County
Carthage, Missouri

Dear Mr. Tatum:

In your letter of March 23, 1953, you requested an official opinion of this office as follows:

"(1) There is a presently existing vacancy in the office of the House of Representatives by the death of Ray Harvey, who was the First Legislative District of Jasper County, Missouri representative, and on the 20th day of March, 1953, the Missouri governor issued a Writ of Election directing an election to supply such vacancy to be held on April 7, 1953, within the limits of the First Legislative District of Jasper County, Missouri;

"(2) The city of Carthage, located in the First Legislative District of Jasper County, is going to have a regular municipal election on the 7th day of April, 1953; possibly other cities of the third and fourth class in the First Legislative District will have municipal elections on that same date;

"(3) On April 7, 1953, there will be a county wide election for school directors (all districts) and in some districts, there will be a vote on school levys.

Honorable Stewart E. Tatum:

"The Jasper County Court has today inquired of me whether or not the same Judges and Clerks in each precinct in the First Legislative District may not handle all three propositions above, with the County Court paying one-third, with the school district paying one-third, and the city paying one-third of the salaries of the Judges and Clerks. I have advised the County Court that the same Judges and Clerks may handle proposition No. 1 and proposition No. 3, but that proposition No. 2, which is a municipal election, must be handled by a separate panel of Judges and Clerks in accordance with the respective city law and ordinances, but that both panels may occupy the same location of voting in the precinct with the municipality paying one-half of the rental, if any, and the County Court paying the other half.

"In the interests of economy and to eliminate duplication of Judges and Clerks on the same date, the County Court has requested that I obtain from you an opinion as to the proper way of handling these three items at the very earliest possible moment. The County Court further states that in some of the rural precincts and towns of the First Legislative District there may not be enough available personnel to make up a duplicate panel of Clerks and Judges, and it seems there cannot be different election dates set at this time. * * *."

An examination of the Missouri Constitution, statutes, and court decisions has disclosed no prohibition against a person serving as a judge or as a clerk in the three elections you mention. There appears no inconsistency or incompatibility in such dual service.

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Thus, for example, Section 165.330, 1951 Supp., RSMo 1949, specifically authorizes the use of the same judges and clerks in certain municipal and school elections as follows:

"1. The qualified voters of such town, city or consolidated school district shall vote by ballot upon all questions provided by law for submission at the annual school meetings, and such election shall be held on the first Tuesday in April of each year, and at such convenient place or places within the district as the board may designate, beginning at six o'clock a.m. and closing at seven o'clock p.m. of said day. The board shall appoint three judges of election for each voting place, and said judges shall appoint two clerks; said judges and clerks shall be sworn and the election otherwise conducted in the same manner as the elections for state and county officers and the result thereof certified by the judges and clerks to the secretary of the board of education, who shall record the same, and, by order of said board, shall issue certificates of election to the persons entitled thereto; and the results of all other propositions submitted must be reported to the secretary of the board, and by him duly entered upon the district records.

"2. All propositions submitted at said annual meeting may be voted for upon one and the same ballot, and necessary poll books shall be made out and furnished by the secretary of the board; provided that in all cities and towns having a population exceeding two thousand and not exceeding seventy-five thousand inhabitants, said elections may at the option of the board be held at the same time and places as the election for municipal officers with the judges and clerks of such municipal election serving as judges and clerks of said school election, but the ballots for said school

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election shall be upon separate pieces of paper and deposited in a separate ballot box kept for that purpose.

"3. Should such school district embrace territory not included in the limits of such city or town, the qualified voters thereof may vote at such voting precinct as they would be attached to, provided the ward lines thereof were extended and produced through such adjoining territory; provided, that in any year in which a county superintendent of public schools is to be elected that the qualified voters of such town, city or consolidated district where registration of voters is required, must vote in the ward or precinct of which they are residents, if the place of voting has been so designated by the board of education; provided, that if there shall be any other incorporated city or town included in such school district, there shall be at least one polling place within such other incorporated city or town and said school election shall be conducted within the limits of such other incorporated city or town in the same manner as hereinbefore provided for cities or towns having a population exceeding two thousand and not exceeding seventy-five thousand inhabitants.

"4. All school districts in cities, towns and villages in this state which are now or which may hereafter be under special charter shall hereafter hold their annual school elections on the first Tuesday in April, and the members of the boards of education now serving in such districts shall continue to serve until the first Tuesday in April next following the expiration of the terms for which they were elected or appointed, and until their successors are elected and qualified." (Italics ours.)

However, Section 111.310, RSMo 1949, which designates the qualifications of judges and clerks, may prevent, in some instances, a person from serving as judge or clerk for more than one election. Said section reads as follows:

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"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."

Therefore, it may be that a judge or a clerk may be eligible to vote in one of the elections you mentioned, and not be entitled to vote at one or more of the others. If such person is not entitled to vote in all three elections, he is not qualified to serve as judge or clerk for those elections in which he is not entitled to vote.

It would be necessary for the appointing body to examine the qualifications of all prospective judges and clerks to determine whether they are legally entitled to vote at the elections in which they are to serve.

Although the same judges or clerks may serve in different elections on the same day, they are entitled to compensation for each separate election. Compensation for judges and clerks is provided for in Section 111.350, RSMo 1949:

"All judges and clerks of election shall be allowed such compensation for their services in conducting elections and returning the poll books and ballots to the county clerk's office, as the county courts of their respective counties may deem reasonable, not to exceed six dollars per day, except in townships or precincts where the vote at any election is in excess of six hundred votes the county courts may at their option pay at the rate of fifty cents per hundred for each additional one hundred votes or major fraction thereof, not to exceed ten dollars for any election, to be paid out of the county treasury."

Each appointing body should determine what compensation is desirable and allowable for services performed in their election, and provide compensation accordingly.

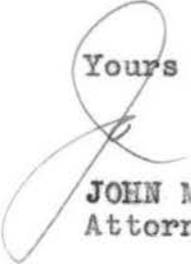
Honorable Stewart E. Tatum:

CONCLUSION.

It is, therefore, the opinion of this office that a person, otherwise qualified, may serve as a judge or clerk for a special election to fill a vacancy in the office of representative, a municipal election and an election of school directors, all being held on the same day.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Paul McGhee.

Yours very truly,



JOHN M. DALTON
Attorney General

PMcG:lrt;irk