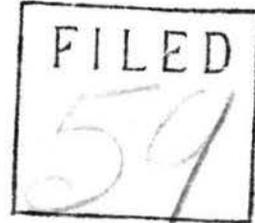


ELECTIONS: In counties of 200,000 to 400,000 population, clerk of Board of Election Commissioners cannot hold office of treasurer of municipality.

March 19, 1938.

3-25

Honorable Jas. L. McQuie, Chairman
Board of Election Commissioners
Saint Louis County
Clayton, Missouri



Dear Sir:

This will acknowledge yours of the 16th, which reads as follows:

"On behalf of the Board of Election Commissioners of St. Louis County, your opinion is respectfully requested on the following proposition:

"Can a clerk appointed by this Board hold an appointive office as City Treasurer from a municipality located in St. Louis County?

"The Election Laws of the State of Missouri revised for 1935 and 1936, Chapter 61, Article XV, Section 45, sets forth the creation, appointment and qualification of the members of the Board of Election Commissioners of St. Louis County; and Section 49 provides for the appointment by the Election Commissioners of two clerks of the Board."

Section 49, p.p. 260-261, L. 1935, after providing for the appointment of two clerks of the Board of Election Commissioners, reads as follows:

" ** 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. ** "

Since the foregoing provision makes the clerks in question subject to the same restrictions as the Commissioners, we must look into the law relating to the appointment of Commissioners, to see what those restrictions are.

Section 45, p. 258, L. 1935, provides for the appointment of Commissioners, and then adds:

" ** They shall hold no other public office other than notary public and shall be ineligible to an elective or appointive office during their term of office, and shall before entering upon the duties of said office take and subscribe an oath to support the Constitution of the United States and of this state, and to demean themselves faithfully and impartially in office. ** "

If, therefore, the position of city treasurer of a municipality is a "public office", or even if it is an "office", the clerk of the Board of Election Commissioners cannot occupy it during his term as clerk, and therefore we must determine whether the position of city treasurer of a municipality is a public office. A "public office" has been defined by the courts of this state on numerous occasions. One of the recent definitions by our Supreme Court is found in the case of State ex rel. vs. Truman, 64 S. W. (2d) 1.c. 106, which is in the following language:

"In Mechem on Public Officers, pp. 1 and 2, Sec. 1, it is said: 'A public office is the right, authority and duty, created and conferred by law, by which for a given period, either fixed by law or enduring at the pleasure of the creating power, an

individual is invested with some portion of the sovereign functions of the government, to be exercised by him for the benefit of the public. The individual so invested is a public officer.' We have approved this definition in State ex rel. Walker v. Bus, 135 Mo. 325, 331, 332, 36 S. W. 636, 33 L. R. A. 616, State ex rel. v. Hackmann, 300 Mo. 59, 254 S. W. 53, 55, and Hasting v. Jasper County, 314 Mo. 144, 282 S. W. 700, 701; and it appears to be in harmony with the great weight of authority. State ex rel. Key v. Bond, 94 W. Va. 255, 118 S. E. 276, 278, 279; State ex rel. Landis v. Board of Commissioners, 95 Ohio St. 157, 115 N. E. 919, 920; Bunn et al. v. People ex rel., 45 Ill. 397, 409. *** "

A compilation of the various definitions of "public officer" will be found in the case of State ex rel. vs. Hackmann, 300 Mo. 59. Among those definitions is the following (l.c. 67) :

"In the most general and comprehensive sense a 'public office is an agency for the State and a person whose duty it is to perform this agency is a 'public officer.' Stated more definitely a 'public office' is a charge or trust conferred by public authority for a public purpose, the duties of which involve in their performance the exercise of some portion of sovereign power, whether great or small. A public officer is an individual who has been elected or appointed in the manner prescribed by law, who has a designation or title given to him by law, and who exercises the functions concerning the office assigned to him by law. (State ex rel. Smith vs. Theus, 38 So. 870-72, 114 La. 1098; cited in State ex rel. v. Maroney, 191 Mo. l.c. 545.) "

The statutes of the state authorize the election or appointment of a city treasurer, and the city ordinances prescribe his duties. We understand from conversations with you that the municipality in question is a city of the fourth class. Your attention is called to Section 6960, R. S. Mo. 1929, which reads in part as follows:

"Appointive officers.--The mayor, with the consent and approval of the majority of the members of the board of aldermen, shall have power to appoint a treasurer, city attorney, city assessor, *** "

Section 6974, R. S. Mo. 1929 reads in part as follows:

"Powers and duties to be prescribed by ordinance.-- The duties, powers and privileges of officers of every character in any way connected with the city government, not herein defined, shall be prescribed by ordinance. *** "

It will be noted from the foregoing, that the treasurer of a city is denominated by the Legislature an officer of the city, and from the definitions heretofore given in this opinion, it is apparent that the treasurer of the city is a person "elected or appointed in the manner prescribed by law, who has a designation or title given to him by law, and who exercises the functions concerning the office assigned to him by law." We must, therefore, conclude that the city treasurer is a public officer and hence the office he holds is a public office.

CONCLUSION.

It is, therefore, the opinion of this office that a clerk of the Board of Election Commissioners in

Hon. Jas. L. McQuie

-5-

March 19, 1938

counties of 200,000 to 400,000 population, appointed under the provisions of Section 49, p. 260, L. 1935, cannot also hold an appointive office as city treasurer of a municipality.

Very truly yours,

HARRY H. KAY
Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

HHK:FE