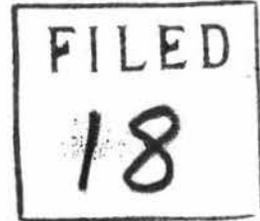


ELECTIONS

} Contract of Board of Election Commissioners of Kansas City
} extending beyond term of office of members entering into
} such contract not invalid merely because of such fact.

March 15, 1950



Board of Election Commissioners
Kansas City 6, Missouri

Attention: Victor Z. Glennon

Gentlemen:

This is in answer to your letter of recent date requesting an opinion of this department and reading as follows:

"We would like to have your opinion concerning the validity of a certain contract entered into by the former Board of Election Commissioners of Kansas City, Mo., for a term commencing January 12, 1949, to and including December 31, 1952. It is the opinion of the present Board that this contract entered into by their predecessors is not binding upon the present Board.

"The aforesaid contract was entered into on December 7, 1948 subject to acceptance by the Board on or before December 31, 1948.

"We would appreciate hearing from you at your very earliest convenience inasmuch as the contract covers the storage and delivery of certain election paraphernalia for each of the precincts in Kansas City."

The contract entered into December 7, 1948, for a term commencing January 12, 1949, and ending December 31, 1952, provides for the storage of certain items used in elections in Kansas City, such as tables, voting booths, saw horses, etc. Such contract also provides for the payment for the delivery of such election equipment

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and the return of such equipment to storage when each election is completed. Such contract also provides for the charge for necessary labor in connection with the delivery of the equipment, supplies and paraphernalia.

The contract between the election board of Kansas City and the Monarch Transfer & Storage Company, of course, is for a period of approximately four years and the term covered by the contract began three days before the date upon which the terms of office of the members of the election board who entered into the contract were scheduled to expire. In the case of *Aslin v. Stoddard County*, 106 S.W. (2d) 472, the county court of Stoddard County on December 31, 1932, employed a janitor of the court house and office building of Stoddard County for the succeeding year. Two of the members of the county court which hired this janitor were defeated in the August Primary of 1932, and, of course, ceased to be members of the county court at the beginning of the year 1933. The Supreme Court of Missouri said at l. c. 476:

"In *Manley v. Scott*, supra, the Minnesota Supreme Court had before it a question similar to that we are now considering. On December 31, 1908, the board of county commissioners appointed and by written contract employed one Shaffer as morgue keeper for the year 1909. The terms of two of the five members of the board expired at midnight that night, two new commissioners having been elected at the preceding November election. When the two new commissioners took office, soon after January 1, 1909, the board elected a new chairman and vice chairman, as required by statute, and attempted to rescind the contract with Shaffer and make a new contract with one Manley as morgue keeper for the year 1909. The court held that the board of county commissioners had power to make the contract with Shaffer when it was made and, 'Having the power at that time to employ a morgue keeper, there is no implied limitation upon that power which restricts the possible term of employment to the time when any member or members of the board shall go out of office'; and that, the contract with Shaffer being fair and reasonable

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and there being no question of fraud or collusion, said contract was binding and the board, after the qualification of the new members, had no power to rescind it without cause being shown. Speaking of the question of power of the board of county commissioners to 'make a contract with an employee which extends beyond the expiration of the terms of office of certain members of the board,' the court said, 108 Minn. 142, 121 N.W. 628, 629, 29 L.R.A. (N.S.) loc. cit. 655: 'While there is some apparent conflict in the authorities, it is reasonably clear that the weight of authority is to the effect that the board has such power,' citing numerous cases. The court further said (108 Minn. 142, 121 N.W. 628, 629, 29 L.R.A. (N.S.) loc. cit. 659), quoting approvingly from Board of Com'rs of Pulaski County v. Shields, 130 Ind. 6, 29 N.E. 385:

"It (the board) is a continuous body. While the personnel of its membership changes, the corporation continues unchanged. It has power to contract. Its contracts are the contracts of the board, and not of its members. An essential characteristic of a valid contract is that it is mutually binding upon the parties to it. A contract by a board of commissioners, the duration of which extends beyond the term of service of its then members, is not, therefore, invalid for that reason.'

"In said case of Manley v. Scott the court mentioned as apparently announcing a 'somewhat different conclusion' from that which it said was supported by the weight of authority, practically all of the cases cited in the footnotes in 15 C.J., supra, and proceeded to discuss and distinguish those cases. See, also, notes to Manley v. Scott, supra, 108 Minn. 142, 121 N.W. 628, 29 L.R.A. (N.S.) 652.

"We regard said case of Manley v. Scott as in point and as being soundly reasoned.

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The county court, as we have said, is a continuous body. It represents and acts for the county. In making contracts it may be said to be the county. Many contracts, proper enough and reasonable as to the time of performance, can be conceived which, of necessity, could not be fully performed during the incumbency of all of the judges in office at the time such contracts were made. To hold such contracts invalid and the court powerless to make them simply because some members of the court ceased to be members thereof before expiration of the period for which the contract was made might, and in many instances doubtless would, put the county at disadvantage and loss in making contracts essential to the safe, prudent, and economical management of its affairs. To illustrate:

"In Walker v. Linn County, 72 Mo. 650, the county court, through an appointed agent, insured county property for a period of five years. Point was made, on demurrer, that the court had no power to make the contract. This court held that the county court, under its statutory authority to 'have the control and management' of the county's property and its statutory duty to 'take such measures as shall be necessary to preserve all buildings and property of their county from waste or damage,' had the implied authority to insure the buildings belonging to the county. The contract was held valid. The question of the time of performance as extending beyond the terms of office of the then members of the court was not raised and was not discussed in the opinion, and that case therefore can hardly be considered authority one way or the other on the point we now have under consideration. But, if thought of at all, the time factor must have been regarded by the court as not affecting the validity of the contract. And, whether considered or not in that case,

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can it be doubted that the county court, empowered to insure the county property, could lawfully make a contract for insurance extending beyond the terms of office of its then members, if such contract was made in good faith and was (perhaps because of a lower annual premium than for a short period) advantageous to the county? We think not. Other illustrations might be given. In our opinion, a county court has power to make a contract such as that here in question, for a reasonable time, the performance of which will extend beyond the term of office of some member or members of the court. We so hold.

"We take next the contention that the contract was for an unreasonable time and was made in bad faith and collusively. As to the time factor we think it clear that one year cannot be considered an unreasonable term of employment, the circumstances considered. * * *"

The principle laid down in the Aslin case, supra, we believe, to be applicable to the present case because the contract between the Board of Election Commissioners and the Monarch Transfer & Storage Company was not made by the individual members thereof but by the board.

The question of whether or not the contract between the Board of Election Commissioners and the Monarch Transfer & Storage Company was for an unreasonable time is a question to be determined from the attendant facts and circumstances which existed at the time such contract was entered into. We, of course, have no information as to whether or not this particular contract is an advantageous one. The question of whether or not this four year contract is one for a reasonable time, therefore, is one as to which we can express no opinion.

CONCLUSION

It is the opinion of this department that a contract for storage and delivery of election supplies entered into by the Board of Election

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Commissioners of Kansas City, Missouri, and the Monarch Transfer & Storage Company on December 7, 1949, for a term beginning January 12, 1949, and ending December 31, 1952, is not invalid because of the fact that such contract was to be in effect for a period of nearly four years after the expiration of the terms of office of the election commissioners who entered into the contract. A determination as to the attendant facts and circumstances which prevailed when the contract was entered into is necessary in order to determine whether or not such contract was for a reasonable time.

Respectfully submitted,

C. B. BURNS, JR.
Assistant Attorney General

APPROVAL:

J. E. TAYLOR
Attorney General