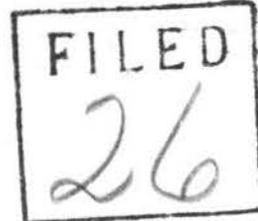


ELECTIONS: C. S. For House Bill-234, repeals provisions of Article 17, Chapter 61, R. S. 1929, in so far as it applies to cities of 600,000 or more, and the judges and clerks appointed under said article and chapter are without office.

July 20, 1937

7/22



Board of Election Commissioners
For the City of St. Louis
208 S. Twelfth Boulevard
St. Louis, Missouri

Gentlemen:

This Department is in receipt of your letter of July 6, 1937, requesting an opinion as follows:

"In setting up the new Permanent Registration Act, the Board has considered the matter of Judges and Clerks of Election. Under Section 10571, R. S. Missouri, 1929, the present officials were appointed on September 10, 1936, to serve as Judges or Clerks of Election and Registration for a period of four years.

The Board would like an opinion as to whether, under the new Permanent Registration Act, signed by the Governor on June 30, 1937, and applicable to the City of St. Louis, the Judges and Clerks so appointed will continue to serve until the expiration of their terms under the commissions they now hold, or, does the new law contemplate that election officials be appointed and commissioned."

July 20, 1937

The new Permanent Registration Act mentioned in your request is, what is designated as, Committee Substitute for House Bill No. 234. Section 5 of the act is 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. * * * * Said judges and clerks shall be appointed for a term ending sixty days prior to the next presidential election after the election at which they were appointed to serve, and shall, during said term, serve as judges and clerks at all special, local, municipal, primary and general elections * * * *."

Section 5, supra, deals exclusively with the selection of judges and clerks, their qualifications and term of office. This section makes it the duty of the Board of Election Commissioners, under this new act, to select these judges and clerks. Their selection is provided for in the same manner, and for the same length of time, as it was formerly done in Section 10571, R. S. 1929.

Section 89 of this act is as follows:

"All acts or parts of acts contrary to, in conflict or inconsistent with the provisions of this act are insofar as they effect cities described in the title of the act hereby repealed."

In re: Poindexter v. Pettis County, 295 Missouri 629, 637, the court said:

"A statute revising the whole subject-matter of a former statute and evidently intended as a substitute for it, although it contains no express words to that effect, repeals the former."

Committee Substitute for House Bill No. 234 is a complete revision of, and substitute for Article 17, Chapter 61, R. S. 1929, insofar as that article and chapter applies to cities having a population of six hundred thousand or more. The Legislature by Section 89 of the act expressly repealed all acts inconsistent with this act, and Section 10571, R. S. 1929, is inconsistent with, and is revised by Committee Substitute for House Bill No. 234, and is repealed.

In Gregory v. Kansas City, 244 Mo. 1.c. 548, the court had before it the question of whether the adoption of a new charter by Kansas City, by which all employees of that city were placed under civil service, vacated and ended the term of office for which the present employees had been employed. The then present employees insisted that they held office until the expiration of the term for which they had been appointed. The court in deciding this question said:

"Not only have the respondents failed to cite any law which sustains their * * * contention, but there is an overwhelming array of authorities, both state and federal, which support the doctrine that no one can acquire a vested right in an office or position created by the legislative department of the nation or of a state or municipality thereof. In discussing this very point, Wagner J., speaking for the Missouri Supreme Court in the early case of State ex rel v. Davis, 44 Missouri 129, said: 'The whole doctrine upon which the case is placed for the plaintiff is without support. It

proceeds on the theory that a person in the possession of a public office created by the Legislature has a vested interest, a private right of property in it. This is not true of offices of this description in this country; they are held neither by grant nor contract. A mere legislative office is always subject to be controlled, modified or repealed by the body creating it. In England, offices are considered incorporeal hereditaments, grantable by the crown, and a subject of vested or private interests. Not so in the American states; they are not held by grant or contract, nor has any person a private property or vested interest in them, and they are therefore liable to such modifications and changes as the law-making power may deem it advisable to enact."

Further at l.c. 548 the court quoting from the case of City of Hoboken v. Gear, 27 N.J.L. 265, said:

"An appointment to a public office during a term of years, and the acceptance of such office, is not a contract between the government and an individual that the officer will serve or that the government will pay during that period. The acceptance may not be a matter of choice but of compulsion; and where the acceptance is voluntary, the officer is not bound to serve during the term. He may remove from the state or resign, or otherwise determine his official relation without a violation of contract . . . And on the other hand the government may abolish the office and thereby terminate the service without a violation of contract."

July 20, 1937

The office or position of judge and clerk of the election created by the legislature under Section 10571, R. S. Missouri, 1929, was abolished and the term terminated when the legislature, by enacting Committee Substitute for House Bill No. 234, repealed said section and the whole of Article 17, Chapter 61, R. S. Missouri, 1929, insofar as it applies to cities having a population of six hundred thousand or more.

CONCLUSION

Therefore, it is the opinion of this Department that the new board of election commissioners under the provisions of Committee Substitute for House Bill No. 234, must appoint the judges and clerks in the manner and at the time provided for in Section 5 of this act. That Committee Substitute for House Bill No. 234 repealed the provisions of Article 17, Chapter 61, R. S. Missouri, 1929, insofar as they applied to cities having a population of six hundred thousand or more, and that by this repeal the present judges and clerks of election whose offices were created by Section 10571 of Article 17, Chapter 61, having no private property or vested interest therein, are without office.

Respectfully submitted,

AUBREY R. HAMMETT, Jr.
Assistant Attorney General

APPROVED:

J. E. TAYLOR (Acting)
Attorney General

LLB MR