

OFFICERS -

COUNTY TREASURERS: Right to refuse payment of
warrant until contest of
election suit has been
determined.

May 10, 1940



Hon. Joseph L. Gutting
Prosecuting Attorney
Clark County
Hiller Building
Kahoka, Missouri

Dear Sir:

We are in receipt of your request for an opinion,
dated May 2, 1940, which is as follows:

"I would like an opinion upon the
following set of facts, to wit:

"At the general election in 1938
'A' received more votes by the
tabulated count than 'B' for the
office of Circuit Clerk of this
County and received his certifi-
cate of election and took the office
and ever since and now is operating
said office. In proper time 'B'
filed a contest and on April 29th
1940 the Circuit Court rendered
a judgment that 'B' received more
legal votes than 'A' and ordered
that 'B' was legally entitled to the
office. From this decision 'A' is
taking an appeal.

"Our County Court duly issued a war-
rant to 'A' for his salary for the
month of April 1940 (This was done
May 1, 1940) and 'A' presented said
salary warrant to The County Treasur-
er for payment, who does not know

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whether or not to pay said warrant as 'B' gave The County Court the following notice on April 30th 1940:

'NOTICE

To the County Court of Clark County, Missouri, and to each of the judges thereof, individually:

You are hereby notified that The Hannibal Court of Common Pleas by its judgment rendered April 29, 1940, and made a record of said Court, did decree that at the general election in Clark County on November 8, 1938, I was duly elected to the office of Circuit Clerk & Ex-Officio Recorder of Deeds of Clark County, and that the office now belongs to me and that Sam B. Fish shall forthwith vacate and turn said office over to me.

You are further notified that I shall hold you responsible for the salary of said office from the date of said judgment and also from January 1, 1939.

(signed) _____ B _____

"The County Court has been paying 'A' his salary since he took office January 1, 1939.

"QUESTION: Should the County Treasurer pay said salary warrant or not and

if so should any such warrants be paid in the future to 'A' during said appeal; and before final determination?"

From the above statement of facts we conclude that you have in mind a case which involved Section 10340 R. S. Missouri, 1929, which provides as follows:

"In every case of a pending contested election, the person holding the certificate of election may give bond, qualify and take the office at the time specified by law, and exercise the duties thereof until the contest shall be decided; and if the contest be decided against him, the court or other tribunal deciding the same shall make an order for him to give up the office to the successful party in the contest, and deliver to him all books, records, papers, property and effects pertaining to the office, and may enforce such order by attachment or other proper legal process."

For the purpose of a more clear understanding of the nature of this kind of case we cite State ex rel v. Woodson, 128 Mo. 497, 31 SW 105; Ex parte Craig, 130 Mo. 590, 32 SW 1121. The court held the appeal bond required to be given by what is now known as Section 10382 R. S. Mo. 1929, providing for appeals from judgments in election contests, does not operate as a supersedeas as to anything appealed from except the costs. See also State ex rel v. Hennings, 194 Mo. App. 545, loc. 549.

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In conclusion, we are constrained to hold, in view of the fact that an appeal in an election contest case does not act as a supersedeas as to anything except the costs, that A has been ousted and that B is now the circuit court clerk under the judgment of the circuit court.

Therefore, it is apparent that the treasurer of the county should not honor the warrant in question, or any warrant in the future that is payable to A.

Respectfully submitted,

B. RICHARDS CREECH
Assistant Attorney-General

APPROVED:

COVELL R. HEWITT
(Acting) Attorney-General

BRC:RW