

ELECTIONS: Clerks and judges of election and clerks employed
COMPENSATION: by the day by the Board of Election Commissioners
of St. Louis County are entitled to statutory
compensation for each calendar day actually
worked.

August 14, 1948



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Dear Sir:

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

"The St. Louis County Board of Election Com-
missioners has requested me as counsel for
the board to secure an opinion from your of-
fice, relative to the question of compensa-
tion to be paid clerks and judges of elec-
tion, and clerks employed for the day by the
Board of Election Commissioners.

"Section 11927 provides that judges and
clerks, 'shall be allowed and paid at the
rate of \$6.00 per day.'

"Section 11932, (laws of Missouri, 1947,
page 284) provides that 'assistants and clerks
employed by the day, by the Board of Election
Commissioners shall receive a salary of \$7.00
per day.'

"The primary election just passed has caused
great heardship and labor on the part of the
clerks and judges and special clerks employed
in St. Louis County. Most of them having been
compelled to work 18 and 19 hours from the
opening of the polls on Tuesday, August 3,
until six or seven o'clock of Wednesday,
August 4.

* * *

"Will you please be good enough to let us have your opinion as to whether the board will be justified in certifying these employees for two days pay, rather than one day as soon as practicable, and thereby oblige."

Section 11927, R. S. Mo. 1939, provides, in part, as follows:

"All judges and clerks of registration and election under this article shall be allowed and paid at the rate of \$6.00 per day. * * *"

Section 11932, Laws of Missouri, 1947, page 284, provides, in part, as follows:

"* * * Assistants and clerks not exceeding six (6) employed by the month by the board of election commissioners shall receive a salary of \$2,400.00 per year, and assistants and clerks employed by the day by the board of election commissioners shall receive a salary of \$7.00 per day, and the same shall be paid upon a certificate of the board that the services have been rendered. * * *"

In the case of *People ex rel. v. West Turin*, 59 N.Y. Sup. 234, the Supreme Court of New York, Onondaga County, held that the law fixing the number of hours which shall constitute a day's work does not have any reference to providing the number of hours that are to be worked to constitute a day's work as an election judge or clerk. We believe this rule to be applicable also in Missouri, since, by the very terms of the statutes regulating the time during which the polls shall be open, a number of hours greater than eight or nine is required.

In the case of *Early County v. Powell*, 20 S.E. 10, the Supreme Court of Georgia held that where an election clerk finished counting the calendar day after the day upon which the election was held, such clerk was entitled to two days' pay. The court's syllabus reads, in part, as follows:

"A special act providing for the compensation of managers and clerks of elections in a given county, which declares that these persons shall each receive for their services in holding elections two dollars per day, entitles them to the per diem mentioned, not only for the day

on which the voting is done, but for the next day, when their services are necessary in completing the count and making up the returns."

The St. Louis Court of Appeals, in the case of State v. Meagher, 124 Mo.App. 333, held that "election day," as used in a statute prohibiting a dramshop keeper from keeping his dramshop open on any general election day, meant the twenty-four hours beginning and terminating at midnight. Therefore, we believe that the "election day" ended at twelve o'clock midnight, August 3rd, and a new day commenced, within the meaning of Sections 11927 and 11932, supra.

We believe the reasoning of the Supreme Court of Georgia in the case of Early County v. Powell, supra, to be applicable here, and hold that where it was necessary, at the August primary, for clerks and judges to continue their election duties after midnight of the day of election, such clerks and judges are entitled to an additional day's pay at the rate provided in the statute.

CONCLUSION

It is the opinion of this department that the clerks and judges of election, and clerks employed by the day for the Board of Election Commissioners of St. Louis County, who actually performed election duties on the calendar day following the day upon which the primary election was held, are entitled to be compensated for their work on the day following such primary election, at the rate provided in Section 11927, R. S. Mo. 1939, and Section 11932, Laws of Missouri, 1947, page 284.

Respectfully submitted,

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APPROVED:

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