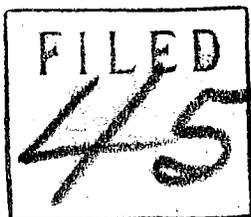


ELECTIONS: Under Section 113.530, RSMo 1955 Supplement, the
CENSUS: Jackson County Board of Election Commissioners
CITIES: will conduct elections in the city of Raytown,
which according to a census taken by the city
has a population of 11,700.



January 31, 1956

Jackson County
Board of Election Commissioners
Independence, Missouri

Attention: Reginald Smith, Clerk

Gentlemen:

You have recently requested an opinion from this office concerning the power of the Jackson County Board of Election Commissioners to conduct elections in the city of Raytown, under the provisions of Section 113.530 RSMo 1955 Supplement. The facts as submitted by you, and by J. H. Greene, Jr., City Counselor, Raytown, Missouri, will, for the purposes of brevity, be summarized as follows:

Raytown was incorporated in 1950 and has extended its city limits on two occasions since that time. A census was taken by the city pursuant to the provisions of Section 81.030, RSMo 1949, which showed a population of over 11,700. The question asked is whether these facts authorize the Jackson County Board of Election Commissioners to conduct elections in Raytown under Section 113.530, supra.

It will be observed that the census conducted by the city of Raytown is said to have been conducted in conformity with Section 81.030, RSMo 1949, which section provides in part:

"Any such city may at any time, by ordinance and at the expense of the city, cause an enumeration of its inhabitants to be made, and its population ascertained, and such census, when so taken, shall have like force

Jackson County
Board of Election Commissioners

and effect as a state or national census to authorize such city to proceed in securing such other incorporation as its population may entitle it to under the laws and constitution of this state, and for any other purpose that the laws may require, or have any other act or thing to be done making the population a basis thereof; * * *

The statute further provides in paragraph two that after such census is taken and return thereof filed, that "all courts of this state shall take judicial notice of the population of such city or town" and by paragraph four of said section it is made applicable to "cities of the fourth class and towns and villages, and cities and towns under special charters."

From the provisions of this section it therefore appears that the section is applicable to Raytown, which is a fourth class city, and that the census taken under authority of such section has like force and effect as a state or national census for any purpose that the laws may require. This section was first enacted in 1885 and has been in its present form since 1899. It was construed in 1909 by the Kansas City Court of Appeals in the case of State ex rel. Writ v. County Court of Cass County, 137 Mo. App. 698, 119 S.W. 1010 where it was held that a census of a city of the fourth class taken under the provisions of what is now Section 81.030 was effective as affecting the matter of a local optional election. The St. Louis Court of Appeals in the case of State ex rel. Holladay v. Rinke, 140 Mo. App. 645, 121 S.W. 159 concluded that a census taken under the provisions of this section applied to and was effective for all purposes other than ascertainment of population for taxation. In reaching this conclusion the court said at 140 Mo. App. 1.c. 662:

"* * *Section 6300, on the contrary, is general in its object, being taken to ascertain population 'for any other purpose that the law may require or have any other act or thing to be done making the population the basis thereof,' and it expressly enacts that 'this section shall apply to cities of the fourth class, and towns and villages, and cities and towns under special charters.' When a census is to be taken in a city of the fourth class, for any purpose

Jackson County
Board of Election Commissioners

other than ascertainment of population for taxation, it must be taken under section 6300, Revised Statutes 1899." (Sec. 6300 RS 1899 is now Sec. 81.030 RSMo 1949).

Thus it appears that the census taken by the city of Raytown under Section 81.030 is effective for purposes of determining questions relating to elections and that by such census it was determined that Raytown has a population of over 10,000. Therefore, it comes within the provisions of Section 113.530, which makes applicable to such city the provisions of Sections 113.490 to 113.870 RSMo 1955 Supplement. Under Section 113.560 the Jackson County Board of Election Commissioners is given full and complete power to conduct any and all elections in the County, including those in such cities of over 10,000 population.

CONCLUSION

Since Raytown thus has a population of over 10,000 and is located in Jackson County, it is the conclusion of this office on the basis of the foregoing statutes, that the Jackson County Board of Election Commissioners is authorized and required to conduct elections in the city of Raytown, Missouri.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Fred L. Howard.

Very truly yours,

John M. Dalton
Attorney General

FLH:vlw