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January 13, 1938

Governor Lloyd C. Stark
Jefferson City
Missouri

My dear Governor Stark:

To supplement such information as you may have received in conversation with members of the Attorney General's office and through the press, I think it might be helpful for me to suggest some facts in connection with the present controversy respecting the County Court's refusal to pay our employees compensation which we have certified for them.

At present there is not existing an actual litigable controversy with the City, although from advices which we have through statements made to the newspapers by Judge McElroy and statements made by him to our chief assistant, Mr. E. H. Niemeyer on yesterday, and otherwise, I have no doubt that we will be involved in a similar controversy with the City at the earliest opportunity, which will be at the end of the month of January.

I feel sure that you know the steps which the Board took to start our work on pleasant

relations with the City and the County. Early after our appointment and organization, the Board arranged for meetings with the City Manager and the County Court. In those meetings we explained the large task to be accomplished prior to the city election March 29. We explained our purpose to conduct the office as economically as was consistent with the public interest and to manage and conduct our affairs with the same degree of care, efficiency and economy which any of us exercises in his own business. There were no unpleasant incidents in either of these

Governor Lloyd C. Stark

2

January 13, 1938

preliminary meetings, although Judge McElroy took occasion to deliver a lot of irrelevant remarks for the benefit of the newspaper men present.

At some time after those early meetings and prior to the last meeting which we had with the County Court, to which I will later refer, Judge McElroy personally assured Mr. Woodmansee that he would pay any payroll certified to him by the Board. If he pursues the purpose which he has expressed to the newspapers such a course will be in direct contradiction of such promise previously made.

It may be helpful also to inform you that this Board construes the new registration law to the effect that it is not contemplated that the Board should handle money, but rather that it should contract for the materials and services required and issue its warrants upon the City and the County, as authorized by the law, in payment for such services. I may add that I think the old law contemplated a similar practice, but the last Board at least had established bank accounts, and in the inventory of property which the former Board offered to us there were listed two or three items of cash in the bank. At our meetings with both the City Manager and the County Court we advised them that this Board did not desire to handle cash* We called their attention to these funds and suggested that they secure the return of them from the former Board so that we might avoid the necessity of handling that money* However, the funds are still in the bank, and until the payroll controversy arose nothing had been done respecting the return of them to the City and the County - so far as we know - although we made our suggestion to them weeks ago.

About ten days or two weeks ago the Board was requested to meet with the County Court. At that time our December payroll which had been certified to the County Auditor was unpaid. Mr. Lewis Ellis was absent from the city the day of the meeting, but Messrs. Woodmansee, Forrester and I -- together with Mr. Niemeyer, our chief assistant — met with the County Court and the County Counselor, Mr. Pew. We were in session some two hours although it required only a fraction of that time for it to be made clear that the County Court was concerning itself primarily with the fact that as authorized and required under the new registration act we were making investigations of fraudulent applications to register. This impertinence of course could have been the basis for our taking angry exception, but I can assure

Governor Lloyd C. Stark

- 3

January 13, 1938

you that we proceeded in a very patient and always courteous relationship with the Court during our meeting.

Since the County Court under the requirements of the County Budget Law has already allotted for the year 1938 the sum of \$175,000 for our use in paying the County's share of the registration and election expenses for this year, the Court could have no proper concern with the compensation which we have contracted to pay to our employees so long as we were acting within the law and within the fund earmarked for our purposes. As a matter of fact, prior to our coming into office it has been the custom not only to pay \$6.00 per day to all employees of the Board of Election Commissioners, but it has even been the unlawful custom to pay overtime to such employees at rates of from fifty-five cents to one dollar per hour, so that within one month a telephone operator received a salary of \$263.00 and an assistant election commissioner — whose annual salary is limited by law to \$2,000 or \$166.00 per month — was in addition paid \$308.00 for overtime, which as you will see would have involved such person working ten hours for every day in a month of thirty days in order to have reached such a sum for overtime. I am informed that there are more exaggerated instances than these that I have given. As a matter of fact, I had not looked at any of the old payrolls, and the Board has not concerned itself with such matters, until the inconsistent and juvenile positions were

taken by the County Court and the City Manager respecting wages which we were paying within the limits prescribed by the law.

Following our last mentioned meeting with the County Court the Presiding Judge, contrary to the impression that he had left with us that the payroll would be approved the following day, telephoned Mr. Niemeyer to come to his office, and there advised Mr. Niemeyer that the Court would pay no compensation in excess of the rate of \$3.50 per day, except for a maximum of nine of our employees to whom they would pay the \$6*00 which we had agreed to pay. \$3.50 is the rate at which we had employed the typists and some other of our employees, being the majority in number# That evening during a meeting of the Board Mr. Woodmansee called Judge Long and confirmed what Judge Long had said to Mr. Niemeyer, and thereafter we talked on the telephone with you and General McKittrick.

Governor Lloyd C. Stark

4

January 13, 1938

The foregoing, I believe, supplemented by such other information as I am sure you have, gives you a fairly complete picture of the nature and origin of the controversy. Judge McElroy has seen fit to abuse the Board and its employees at meetings of the City Council, as reported by the press, although the Board has been careful both as a Board and individually to make no response to these remarks, I dare say this treatment of them has unarmed if not enraged Judge McElroy.

Yesterday after we had received the payroll from the County Court with checks drawn to all of our employees at the rate of \$3.50 per day each, although 41 of them were entitled to \$6.00 per day and a few others entitled to sums between that and \$3.50, the Board called a meeting of all of its employees entitled to compensation at a rate in excess of \$3.50 per day, and there explained the situation and asked for their approval of our opinion that good sense dictated the distribution of checks to persons whom we had employed at \$3.50 per day. That approval was unanimously given without a dissenting word, and all of those employees agreed not to accept the checks at the rate of \$3,50, but to give the Board an opportunity to undertake to compel payment of the compensation to which they were rightfully entitled. As a matter of fact, their response

was most gratifying to us.

When the controversy first developed the Board invited Mr, James Kemper, President of the Commerce Trust Company, and Mr. C. W. Allendorfer, Executive Vice President of the First National Bank, to meet with us, and at that meeting we asked them to consider the question as to whether or not their banks would be agreeable to purchasing our warrants without discount, assuming that the warrants would bear six per cent interest from the date payment of them was refused* They and counsel for those banks have been giving consideration to that question, and at this time I am not advised that either of the banks has reached a final decision although I have had several conversations with Judge Goodrich, General Counsel for the Commerce Trust Company.

Based upon various facts, it is my guess that Judge McElroy has determined to test the validity of the Permanent Registration Law applicable to Kansas City, I think he is animated with the thought that the law may be

Governor Lloyd C. Stark

5

January 13, 1938

declared invalid by the Supreme Court, and for his inspiration he is taking the case involving the police commissioners of Kansas City, which is the case of State ex rel Field, et al vs. Smith, et al, 49 S.W. (2d) 74. I expressed this view to Mr. Harry Kay of General McKittrick's office when he was here early this week. If that is Judge McElroy's purpose, I know of no reason why we should not meet it directly and as early as practicable. The question will probably be raised in any proceeding which we may institute to compel the County Court or Kansas City to pay salaries and expenses which we have incurred.

I do not deem the police commissioners' case good law, but even assuming that the present Supreme Court would decide that case in the same way were it now presented, still I do not believe that that would be controlling upon the facts in our case so far as the controversy with the County Court is concerned, because the County has allotted a definite sum of money and we are proceeding to operate with that fund. As to the City, if the City makes an appropriation comparable with its payments for election purposes in

other years in which city primaries and city elections have occurred, then I think the controversy there is not controlled by the police commissioners' decision. Incidentally, the City paid for election purposes in the year 1934 -- when the last city primary and city election occurred — \$250,000, and in the year 1930 \$207,000. The City's responsibility for election expenses in years in which city elections do not occur is of course less, but the present year is comparable to the years 1934 and 1930, because we do have the city primary and the city election, and in addition to that the cost of the capital investment required to inaugurate permanent registration.

The Board has received a letter from Judge McElroy asking it to submit an estimate of its budget for the fiscal year May 1, 1938 to April 30, 1939. That procedure is required by the City Charter of Kansas City, and we have our estimate in process of preparation and will submit it within the time required, A practical difficulty, however, confronts us in that so far as we can discover the last fiscal budget — that is, May 1, 1937 to April 30, 1938 — for election purposes was only \$40,000 although the City was charged with knowledge that the city primary and the city election would

Governor Lloyd C. Stark -

6

January 13, 1938

occur. We therefore do not know what money is available for the necessary and large expenses which will occur between now and the end of April, which period includes of course the dates for the city primary and the city election.

One of the methods available to test the question of the duty of the County or the City to pay its obligations when payment has unlawfully been refused is by a proceeding in mandamus instituted by one to whom a warrant has been given upon which payment has been refused. Under the law of Missouri such a suit may be begun in the first instance in the Supreme Court, because it has concurrent jurisdiction over extraordinary legal remedies. This question has been discussed with the Attorney General's office, I have also suggested the feasibility of a mandamus suit brought not by an individual employed by the Board upon his protested warrant, but brought in the name of the Board of Election Commissioners by the Attorney General, since this Board is a State Board, The idea I had in mind in suggesting that procedure was to enable the Attorney

General's office to conduct the litigation, and also to relieve the several individuals employed by us from the necessity of bringing and becoming responsible for the costs in the case. I have not had time to investigate the law so as to found the suggestion upon decided cases, but I have made the suggestion to the Attorney General's office through Mr. Kay, and they will I feel sure give it consideration.

I apologize for the length of this letter, but as I conceive this situation the local officials may be using this Board as a chopping block for the resentment of themselves and others against you in having appointed as Election Commissioners men who are trying to observe the law.

I do not believe there is anything in this letter of which the Attorney General's office is not advised, but should you see fit to do so it will be thoroughly agreeable with me for you to show this letter to General McKittrick or to Mr. Kay, Otherwise I wish it regarded as in the strictest confidence.

With assurances of my great respect and sincerest loyalty, I am

Sincerely,

Edgar Shook

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