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Opinion No. 86-374

Honorable Joseph K. Mahony, II
State Representative
406 Armstrong Building
El Dorado, AR 71730

Ms. Madelyn Atkinson
Union County Clerk
Union County Courthouse
El Dorado, AR 71730

Dear Representative Mahony:

By letter of June 4, 1986, you requested the opinion of this Office on the following three questions which I have paraphrased as follows:

1. Whether volunteer deputy registrars are eligible to be included in the coverage provided by the counties' "blanket bond."
2. Whether, once voter registration forms have been received and signed for by the volunteer registrars, the permanent registrars (i.e. county clerks) are no longer subject to the liability provisions contained in Amendment 51 concerning misuse of voter registration.
3. Whether the volunteer deputy registrars are eligible for workmen's compensation from the county, or whether the county is liable for injuries suffered by the volunteer registrars in the course of their duties.

In response to your first question, volunteer deputy

registrars are eligible to be included in the coverage provided by the blanket bond of the counties. In Act 4 of 1985, which established the blanket bond program, the legislature stated that:

any elected officer of the counties and the employees or deputies of any elected officer, excluding members of the quorum court and the members of the various county boards and commissions, are covered by the blanket bond. (Emphasis added).

Ark. Stat. Ann. §17-4302 (1985 Supp.). This clearly indicates that deputy voter registrars, who are, by virtue of Amendment 51, deputies for limited purposes of the county clerks, are covered by the blanket bonds.

In response to your second question, I have told several clerks that, by having volunteer deputies sign for the voter registration forms they receive from the county clerk, the county clerk has properly accounted for those forms pursuant to the provisions of section 8 of Amendment 51 which states in relevant part:

The permanent registrar shall give a receipt to the State Auditor for all blank affidavits of registration issued to the county and shall be strictly accountable to the State Auditor for the blanks provided. The permanent registrar must account for each blank set of affidavits of registration, whether unused, spoiled or in the proper registration record files . . . by the first of June of each year the permanent registrar shall make an accounting of all affidavits of registration to the Auditor.

I have told the clerks that having the volunteer deputy sign for the forms by form number they satisfy the accountability requirements of section 8.

You indicate in this question that I have stated to certain clerks that they are no longer subject to the "liability provisions contained in Amendment 51 concerning misuse of voter registration." You may be referring to section 15 of Amendment 51 which states in relevant part that:

(a) Any person who shall maliciously and intentionally destroy, steal, mutilate, or unlawfully detain or obtain any affidavits of registration or any registration record files shall be guilty of a felony (Emphasis added).

I have never told any clerk that the mere signing out of voter registration forms to deputy registrars relieves them of any liability resulting from the violation of this provision. Section 15 clearly states that any person who does the acts enumerated therein is guilty of a felony. If a clerk does the acts enumerated therein, they would be guilty of a felony although, presumably, a county clerk who signed out such voter registration forms could not maliciously or intentionally destroy, steal, mutilate or unlawfully detain or obtain any such forms.

The answer to your third question is that volunteer deputy registrars are not eligible for workers compensation from the county, and the counties are not liable for injuries suffered by the volunteer registrars in the course of their duties.

With respect to the worker's compensation issue, this Office issued Opinion NO. 85-175 on July 31, 1985, which responded to the question of Prosecuting Attorney Chris Raff regarding such coverage for volunteer firemen and sheriff's auxiliary law enforcement officers. The opinion noted that the Public Employee Claims Division considers sheriff's auxiliary law enforcement officers covered if, when injured, such officers were acting under the control and direction of the sheriff and were being paid compensation for their work, or were responding to an emergency. Of course, the volunteer deputies contemplated by the Consent Decree would not be paid and could not be considered to be responding to an emergency. Furthermore, the opinion noted that certain specific volunteers are required to be covered under Act 866 of 1985, which provides for workmen's compensation for county employees. The opinion notes that under the maxim of expressio unius est exclusio alterius (the expression of one is the exclusion of the other), other types of volunteers are impliedly excluded from such coverage. (See Opinion NO. 85-175 at page 3, citing Hackney v. Southwest Hotels, Inc., 210 Ark. 234, 195 S.W.2d (1946), Watkins v. Wassell, 20 Ark. 410 (1959)). A copy of Opinion NO. 85-175 is attached. Furthermore, Ark. Stat. Ann. §12-3703 (1979 Repl., 1985 Supp.) states that:

(B) Volunteers recruited, trained, or accepted by any department shall, to the extent of their volunteer service, be exempted from all provisions of law relative to state employment, hours of work, return or compensation, leave time, and employee benefits. Volunteers shall, however, at all times comply with applicable work rules.

This statute indicates a legislative intent that volunteers not be included in programs such as workmens compensation.

With regard to the issue of whether the county is liable for injuries suffered by the volunteer registrars in the course of their duties, Ark. Stat. Ann. §12-2901, states:

It is hereby declared to be the public policy of the State of Arkansas that all counties, municipal corporations, school districts, sepcial improvement districts, and all other political subdivisions of the State shall be immune from liability for damages, and no tort action shall lie against any such political subdivision, on account of the acts of their agents and employees.

The counties would not, then, be liable for injuries to such deputies.

The foregoing opinion, which I hereby approve, was prepared by Assistant Attorney General Tim Humphries.

Sincerely,


STEVE CLARK
Attorney General

SC/TCH/ljm
enclosure