

ELECTIONS: Size of ballots on constitutional convention
and retaining of a judge.

December 19, 1941

Honorable Dwight H. Brown
Secretary of State
Jefferson City, Missouri

Dear Sir:



We are in receipt of your request for an opinion under date of December 15, 1941, which is as follows:

"In accordance with the laws and constitution, I shall certify the above question to the county clerks and boards of election commissioners to be voted upon in the general election to be held in November, 1942. This is made mandatory by Art. XV, Sec. 4 of the constitution, submitted by initiative and adopted Nov. 2, 1920.

"Art. XV, Sec. 4 does not go into detail, requiring this question to be submitted on a separate ballot, separate from any other constitutional amendments or initiated laws which may be voted upon next November, nor does it specify the size of the separate individual ballot. I am attaching hereto a ballot, size 2-3/4" x 4", which was found in the old files of this Department and is evidently the one used in voting at the time the last constitutional convention was authorized by popular vote.

"Art. XV, Sec. 2, provides the General Assembly may propose constitutional amendments, to be voted upon 'on one independent and separate ballot'. Sec. 3 permits the General Assembly to authorize a vote of the electors of the state on the question of holding a

convention to revise and amend the constitution, 'which shall be submitted to the electors on a separate ballot'. I assume that the word 'independent' in Section 2 means that we will have a ballot for this constitutional convention question, one for the initiated measures and amendments and amendments proposed by the general assembly, and at least one ballot for the election of candidates for office. One will be provided for the voting on question of retaining certain judges.

"Sec. 11680 R. S. Mo., 1939, instructs that the constitutional ballot, i.e., the ballot containing the proposals of the general assembly and initiated laws or amendments, shall be not less than four inches wide and ten inches long. This provision seems to have been in effect at the time the attached ballot was voted. Please advise whether in your opinion the 4" x 10" minimum applies to the individual separate ballot on the question, shall there be a convention to revise and amend the constitution. Please also inform me whether in your opinion the same minimum size should apply to the separate ballot on question of retaining certain judges."

Article XV, Section 4 of the Constitution of Missouri provides as follows:

"The question 'Shall there be a convention to revise and amend the Constitution?' shall be submitted to the electors of the state at a special election to be held on the first Tuesday in August, one thousand nine hundred and twenty-one, and at each general election next ensuing the lapse of twenty successive years since the last previous submission thereof, and in case a majority of the electors voting

for and against the calling of a convention shall vote for a convention, the governor shall issue writs of election to the sheriffs of the different counties, ordering the election of delegates, and the assembling of such convention, as is provided in the preceding section."

This section was placed in the Constitution by initiative and was adopted November 2, 1920, appearing in the Laws of 1921, page 711. At the time this section was placed in the Constitution there was in effect at that time a section which is now Section 11676, R. S. Missouri 1939.

Section 11676, R. S. Missouri 1939, provides as follows:

"Whenever a proposed constitutional amendment or other question is to be submitted to the people of the state for popular vote, the secretary of state shall duly, and not less than twenty days before the election, certify the same to the clerk of each county court of the state, and the clerk of each county court shall include the same in the publication provided in section 11542."

Under the above section it is the duty of the secretary of state to certify the election to the clerk of each county court of the state. It is also very noticeable under the above section that the first election on the question of "Shall there be a convention to revise and amend the Constitution?" must be submitted first at a special election and that within twenty years thereafter at a general election only.

Article XV, Section 2 describes how the proposed amendments shall be published and submitted to a vote. It covers not only amendments proposed by the General Assembly but also amendments by initiative petition.

Article XV, Section 3 of the Constitution of Missouri only applies to amendments by convention as proposed by the General Assembly and not by an order of the secretary of state

as set out in Section 4, Article XV, supra.

By reason of the above constitutional sections the Legislature enacted Section 11680, and Section 11682, R. S. Missouri 1939. Section 11680, supra, was originally enacted in the Laws of 1909 and amended by the Laws of 1913, page 326 and repealed and reenacted in the Laws of 1919. Section 11680, supra, was held to be invalid as to that part which refers to the question "Shall there be a convention to revise and amend the Constitution?" It was so held in *State v. Imhoff*, 238 S. W. 122, paragraphs 8, 9, where the court said:

"We have so frequently construed that portion of our Constitution (section 28, art. 4) which provides that no bill, except as therein provided, shall contain more than one subject, which shall be clearly expressed in its title, that, in view of the inescapable conclusion flowing from the reading of the title and the provision of the act under review, a discussion of same would seem to be unnecessary. It may therefore be sufficient to say that the purpose to be subserved by the Constitution in regard to the title of an act is that by its terms it must be such as to serve as a clear and comprehensive indicator of the purpose of the act. While it may be so general as to omit matters germane to the principal features of the statute, if it sufficiently indicates the substantial purpose of the law, it will not be violative of the Constitution. *State v. Span*, 258 Mo. 305, 167 S. W. 500. While, therefore, the title in this case is sufficiently comprehensive to indicate that the act is in regard to the submission of constitutional amendments, there is an utter absence of any reference to the submission of any other proposition such as is contemplated by the provision. So far, therefore, as this act attempts to regulate the submission of other propositions than constitutional amendments, it must be held to be invalid. We discussed this

question, with the citation of apposite authorities in the case of State v. Sloan, supra, and in the later cases of State v. Crites, 277 Mo. 194, 209 S. W. 863, and Vice v. Kirksville, 280 Mo. 348, 217 S. W. 77, with a like conclusion to that reached in the present case; There is neither reason nor authority for departing therefrom."

Section 11682 was enacted in the Laws of 1921, First Extra Session, page 182. Section 11682 only applies where the constitutional convention is voted upon at a special election and since by your request you intend to submit the question at the general election this section is not applicable.

Section 11680, R. S. Missouri 1939, provides "The constitutional ballot shall not be less than 4" wide and 10" long, of the same kind of paper, color and of equal size." Since this section has been declared invalid as to the question of a constitutional convention, this limitation is of no effect on the size of the ballot upon that question.

The ballot which you have attached to this request was one that was used in compliance with the mandatory instructions as set out in Article XV, Section 4 of the Constitution of Missouri which provided for a special election at that time. We find no law that specifically describes the size of the ballot on the question of "Shall there be a convention to revise and amend the Constitution?" and for that reason we hold that it is in the reasonable discretion of the secretary of state to furnish a ballot of any size.

Your second question as to the size of the ballot used on the question as to whether or not a judge may continue to retain office is covered by the constitutional amendment as set out in the Laws of 1941, page 722. Section 3 of that amendment partially reads as follows:

"Whenever a declaration of candidacy for election to succeed himself is filed by any judge under the provisions of this section, the Secretary of State shall not less than thirty (30) days before the election certify the name of said judge and the official title

of his office to the clerks of the county courts, and to the boards of election commissioners in counties or cities having such boards, or to such other officials as may hereafter be provided by law, of all counties and cities wherein the question of retention of such judge in office is to be submitted to the voters, and, until legislation shall be expressly provided otherwise therefor, the judicial ballots required by this section shall be prepared, printed, published and distributed, and the election upon the question of retention of such judge in office shall be conducted and the votes counted, canvassed, returned, certified and proclaimed by such public officials in such manner as is now provided by the statutory law governing voting upon measures proposed by the initiative."

The above partial section specifically provides that ballots prepared, printed, published and distributed shall be the same as upon voting of measures proposed by the initiative. The initiative is set out in Article IV, Section 57 of the Constitution of Missouri. By reason of this constitutional section, Section 12291 of the Revised Statutes of Missouri 1939 was enacted. Under that section the secretary of state shall certify a copy of the ballot title and numbers of civil measures to be voted upon to the county clerks of each county and since Section 11680, supra, which applies to the method of voting and form of ballot of the constitutional amendment, specifically states "The constitutional ballot shall not be less than 4" wide and 10" long of the same kind of paper, color and of equal size," then the ballot, upon the question of whether or not a judge shall be retained in office, must be not less than 4" wide and 10" long and of the same kind of paper, color and of equal size.

Respectfully submitted

APPROVED:

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