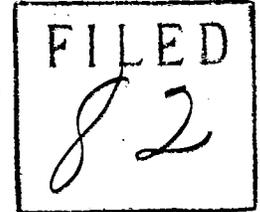


ELECTIONS: Judges and clerks appointed to serve at the special election to be held Feb. 27, 1945, on the question of adopting a new Constitution, can also serve in the same capacity at a special election to fill the office of State Senator to be held in Adair, Macon and Shelby Counties on the same date.

February 12, 1945



Honorable William E. Shirley
Prosecuting Attorney
Adair County
Kirksville, Missouri

Dear Sir:

Reference is made to your letter of February 10, 1945, reading as follows:

"In this county, on February 27, 1945, we have an election to elect a State Senator to fill the vacancy caused by the resignation of Mr. Briggs. Also on the same day, it is the election on the new Constitution.

"Will you kindly advise me if the same judges in one election can act in the other?"

The manner of holding the special election submitting the proposed Constitution of Missouri to the electors is provided by Section 1 of an Ordinance adopted by the Constitutional Convention on its 215th day. The pertinent parts thereof read as follows:

"The proposed new Constitution * * * shall be submitted to the electors of the State for approval or rejection, at a special election to be held for that purpose on Tuesday, February 27, 1945. * * * Said election shall be held and said qualified electors shall vote at the usual places of voting at general elections in the several counties of this State, including the City of St. Louis; and, except as herein otherwise provided, said election shall be conducted and returns thereof made according

to the laws in force on said date regulating general elections; provided, that it shall not be necessary to hold said election with booths for the voters, and that said election shall be conducted by two judges and two clerks at each polling place, one judge and one clerk to be selected from each of the two Parties which cast the highest and next highest number of votes for Governor at the last general election. * * *

The special election for the election of a State Senator from the Ninth Senatorial District to fill the vacancy created by the resignation of the Honorable Frank P. Briggs, has been called by the Governor under the provisions of Section 14 of Article IV of the Constitution of Missouri. The manner of holding such election is provided by Chapter 76, Revised Statutes of Missouri, 1939. In view of the proviso found in the portion of the Ordinance quoted above, we feel that attention should be directed to the following parts of the Chapter mentioned:

"Sec. 11800. All officers upon whom is imposed by law the duty of designating the polling places, shall provide in each place designated by them a sufficient number of places, booths or compartments, which shall be furnished with such supplies and conveniences as shall enable the voter conveniently to prepare his ballot for voting, in which compartment the electors shall mark their ballots, * * *"

"Sec. 11499. In all counties in this state, four judges of election shall be appointed by the county court for each election precinct in each of said counties; * * *"

"Sec. 11501. In all precincts in this state that at the last preceding general election cast two hundred or more votes, at the same

time and in the same manner as judges of election are appointed or elected, two additional judges of election for each such election district in the state shall be appointed or elected; * * *"

"Sec. 11504. In all precincts casting less than two hundred votes in the last general election, the judges shall appoint two clerks, and in all precincts casting two hundred or more votes in the last preceding general election, the judges shall appoint four clerks. * * *"

It is apparent that no conflict need arise in the conduct of the elections, as both are to be held in accordance with the statutes relating to general elections, except to the extent change is made by the proviso found in the above quoted Ordinance. We believe that such proviso was incorporated solely as a measure to reduce the expense incident to holding the election, and that it is not a limitation on the total number of judges that might validly be appointed.

CONCLUSION

In the premises, we are of the opinion that an otherwise eligible person can serve as judge or clerk in both elections. It is our further opinion that the county court may appoint the number of judges required for each voting precinct, such number having been determined as provided in Sections 11499 and 11501, and designate them as judges of both the election on the question of the adoption of the new Constitution for Missouri and for the filling of the office of State Senator. In addition, the county court should appoint for each voting precinct two clerks of the election on the question of the adoption of the new Constitution for Missouri, selected according to the provisions of the Ordinance. The total number of clerks of the election for the filling of the office of State Senator will be determined in each voting precinct in accordance with the provisions of Section 11504,

Honorable William E. Shirley

-4-

February 12, 1945

and will be appointed by the judges of election of such voting precinct, who may, at their discretion, include in such number and appoint the same persons previously selected by the county court as the clerks of the special election on the question of the adoption of the new Constitution for Missouri. Booths must be provided for the balloting on the Senatorial candidates, as provided by Section 11800.

Respectfully submitted

WILL F. BERRY, Jr.
Assistant Attorney General

APPROVED:

VANE C. THURLO
(Acting) Attorney General

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