

ELECTIONS: Election to supply vacancy of state representative subject to general election laws. Appointment of but two judges in each precinct not authorized.

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Honorable William E. Seay
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Dear Sir:

Your recent opinion request reads in part as follows:

"It has become incumbent upon this county to hold an election to fill the vacancy created by the death of our representative to the state legislature.

"Since this is a special election, I should like to know if it would be in accord with the election laws if only two judges were used in each precinct instead of four."

Section 14, Article III, Constitution of Missouri, 1945, provides that:

"Writs of election to fill vacancies in either house of the general assembly shall be issued by the governor."

The statutory provision regarding the issuance of writs of election is Section 21.110, RSMo 1949, which reads:

"Whenever the governor shall receive any resignation or notice of vacancy, or when he shall be satisfied of the death of any member of either house, during the recess, he shall, without delay, issue a writ of election to supply such vacancy."

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The time in which such election shall be held is provided for by Section 111.210, RSMo 1949, as follows:

"When the governor issues a writ of election to fill any vacancy, he shall mention in said writ how many days, to be not less than ten, the sheriff shall give notice thereof."

Section 21.130, RSMo 1949, provides for the duties of the sheriff upon receipt of a writ of election directed to him. This section reads:

"The sheriff to whom any writ of election shall be delivered shall cause the election to supply such vacancy to be held within the limits composing the county or district at the time of the next preceding general election, and shall issue his proclamation or notice for holding the election accordingly, and transmit a copy thereof, together with a copy of the writ, to the sheriff of each of the counties within which any part of such old county or district may lie, who shall cause copies of such notice to be put up, and the election to be held accordingly, in such parts of their respective counties as composed a part of the old county or district for which the election is to be held, at the last preceding general election; and the returns shall be made and the certificate of election granted in all things as if no division had taken place."

The general statutory provision regarding the appointment of judges of election is Section 111.270, RSMo 1949, which reads:

"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. It shall be the duty of said judges to select from their number two judges who shall be designated and known as receiving judges, and two who shall be designated and known as counting judges."

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While it is true that certain special statutes such as Section 111.290, RSMo 1949, regarding special elections on bond issues and Section 125.080, RSMo 1949, regarding constitutional amendments and proposed constitutional conventions specifically authorize the appointment of but two judges for each election precinct, no statutory provision can be found which authorizes the appointment of less than four judges at an election held pursuant to a writ of election issued to fill the vacancy created by the death of a state representative.

Therefore, the general election provision must apply and Section 111.270, supra, must be complied with.

CONCLUSION

It is therefore the opinion of this department that an election held pursuant to a writ of election issued to fill the vacancy created by the death of a representative to the state legislature must be held under the general election laws and that the appointment of but two judges in each election precinct is not authorized.

Respectfully submitted,

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APPROVED:

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