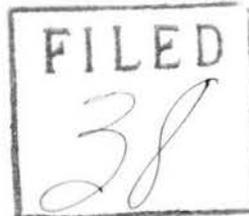


ELECTIONS: City election not a general election within  
the meaning of the Constitution

2-2  
January 31, 1934.



Hon. Robert W. Hawkins,  
Prosecuting Attorney,  
Caruthersville, Missouri.

Dear Sir:

This department is in receipt of your request for an  
opinion as to the following state of facts:

"I am greatly concerned and in fact  
have had many and divers inquiries  
relative to the construction of  
section 44-A-1 of Senate Bills Nos.  
6, 21, 22, 23, 24 and 25 and particu-  
larly that part of said section be-  
ginning with line 25 on page 23 of  
said act as follows: 'Provided, that  
no such election held under the pro-  
visions of this section shall take  
place on any general election day,  
or within sixty days of any general  
election held under the constitution  
and laws of this state, so that such  
elections as are held under this section  
shall be special elections, and shall  
be separate and distinct from any other  
election whatever.'

I request that your office construe the  
above for me and state in your opinion  
whether or not a city election is under  
the constitution and laws of this state  
a general election within the meaning of  
the constitution and law, and other further  
construction which you may desire to offer  
upon the above said section set out, will  
be duly appreciated by me."

I.

A city election is not under the Constitution and Laws of this state a general election.

Article VIII, Sec. 1 of the Constitution of Missouri provides:

"The general election shall be held biennially on the Tuesday next following the first Monday in November of each even year; but the General Assembly may, by law, fix a different day--two-thirds of all members of each house consenting thereto."

Section 655, R.S. Mo. 1929, providing for rules for construing statutes, provides in part:

\*\*\*\*\*the term 'general election' refers to the election required to be held on the Tuesday succeeding the first Monday of November, biennially.\*\*\*\*\*

Fortunately, the case of *The State v. Searcy*, 39 Mo. App. 393 construes a similar provision of the local option law of 1888. The court said (l.c. 405-6):

"It is next objected that, whereas, according to the law in force at the time when this election was ordered and held, a general school election in all the counties of the state was required to be held on the first Tuesday in April, which was the second day of that month, and whereas the election ordered by the county court on the question of local option was held on the eleventh of February, which was within sixty days of the election of school directors, the election on the question of local option was void under the terms of the statute. The provision of the statute relating to elections on the question of local option outside of the corporate limits of any city or town are 'that no such election, held under the provisions of this act, shall take place on any general election day, or within sixty days of any general election held under the constitution and laws of this state, so that elections as are held under this act shall be special elections,

and shall be separate and distinct from any other election whatever.' The Revised Statutes of 1879 contain this general provision: 'The construction of all statutes of this state shall be by the following additional rules, unless such construction be plainly repugnant to the intent of the legislature, or of the context of the same statute. \*\*\*\*\*Sixteenth, the term 'general election' refers to the election required to be held on the Tuesday succeeding the first Monday of November biennially.' R.S. 1879, section 3126. This shows that the school election required to be held in April was not a 'general election' within the meaning of the local option statute, and this disposes of this assignment of error."

#### CONCLUSION

In view of the foregoing, we conclude that a city election is not within the meaning of the Liquor Control Act providing "that no such election held under the provisions of this section shall take place on any general election day or within sixty days of any general election held under the Constitution and laws of this state. \* \* \*"

Respectfully submitted,

JOHN W. HOFFMAN, Jr.,  
Assistant Attorney General.

APPROVED:

---

ROY McKITTRICK,  
Attorney General.