

ELECTION - It is proper in the City of St. Louis to set a date between the 10th and 20th day prior to primary election after which names of candidates cannot be withdrawn or any further changes made in the official ballot.

July 1, 1938

Handwritten: 2/1/38
Board of Election Commissioners
for the City of St. Louis
208 S. 12th Blvd
St. Louis, Missouri



Gentlemen:

We have received your letter of June 15th, which reads as follows:

"The board having set, tentatively, July 19, 1938, as the last date on which names of candidates for offices to be voted for at the August 2, 1938, Primary could be withdrawn, would like an opinion as to whether this date or another date be fixed as the time for making such withdrawals.

"The Board's calendar calls for July 22, 1938, for publication of Form of Official Ballot."

We note in the calendar which you enclosed in your letter that the Board of Election Commissioners for the City of St. Louis is performing all of the duties referred to in Sections 10255, 10256, 10261, 10262 and 10265 of the Revised Statutes of Missouri 1929. These sections all impose certain duties on the "county clerk".

Section 10265 provides as follows:

"At least twenty days before the August primary in any year, when a primary election is held, each county clerk shall prepare sample official ballots, placing thereon alphabetically, under the appropriate title of each office and party designation, the names of all candidates to be voted for in

the precincts of his county. Such sample ballot shall be printed upon tinted or colored paper, and shall contain no blank endorsement or certificate. Such clerk shall forthwith submit such ticket of each party to the county chairman thereof, and mail a copy to each candidate to his postoffice address, as given in his declaration paper, and he shall post a copy of each sample ballot in a conspicuous place in his office. On or before the 10th day before the holding of any primary election the county clerk shall correct any errors or omissions in the ballots, cause the same to be printed and distributed, as required by law in the case of ballots for the general election, except that the number of ballots to be furnished to each precinct shall be one and a half times the number of votes cast by any party in the last preceding election and having nominees and tickets at such primary election."

For the purposes of this opinion we are assuming that a candidate has a legal right to withdraw his name after he has properly filed his declaration and before the primary.

Section 10265 above states that the county clerk shall submit the sample official ballots at least twenty days before the primary election date, to the county chairman, mail a copy to each candidate and also post a copy in his office. Further, that on the 10th day before the primary election the county clerk shall correct any errors or omissions in the ballots and cause the same to be printed and distributed. In the city of St. Louis these duties, required to be performed by Section 10265, fall on the board pursuant to Section 10290 Revised Statutes of Missouri 1929, which provides as follows:

"Any duty required of or power given to county clerks by this article shall, in the city of St. Louis, be performed by or vested in the board of election commissioners for said city, or a majority of said board."

We have, therefore, arrived at the conclusion that the board can set any date it desired between the 10th and 20th day prior to the date of the primary election, at which time the ballot shall assume its final form and after which no names can be withdrawn or revisions made. Section 10265 provides that it shall be in final form on the 10th day prior to such election.

July 19th, the tentative date set to accomplish this purpose is within the 10th and 20th day prior to August 2nd the primary date and, in our opinion, it is proper that such a date be set. The legislature very apparently intended that a reasonable time, within the prescribed limits, should be taken in advance of the said ten day period to prepare the final draft of the ballot.

Section 34, at page 258, Laws of Missouri 1937, provides that, the board shall give ten days notice, by one publication only, in three newspapers "of the time and place of election in each precinct of the city". This section apparently does not require the printing of the final ballot by the board at the same time. This also leads us to the conclusion that Section 10265 is the only applicable statute which throws any light on the particular question you have asked and that under the terms thereof a time can be set before the ten day period and within the said twenty day period for the purpose of completing the final form of the ballot and sending the same to the printers.

CONCLUSION

We are of the opinion, therefore, that a time can arbitrarily be set between the 10th and 20th day prior to the primary date, after which names of candidates cannot be withdrawn from the ballots nor any further changes made in the same.

Respectfully submitted

APPROVED:

J. F. ALLEBACH
Assistant Attorney General

J. E. TAYLOR
(Acting) Attorney-General

JFA:LB