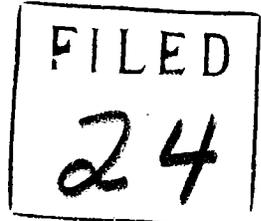


GOVERNOR: Writs directing election to fill vacancies in House of Representatives in Jackson County, Missouri, under Sections 12860, and 12861, R. S. Missouri, 1939, should be directed to the Board of Election Commissioners instead of the sheriff.

October 29, 1941

Filed 24

Honorable Forrest C. Donnell
Governor of Missouri
Jefferson City, Missouri



Dear Governor Donnell:

The Attorney General acknowledges receipt of your letter of October 28, 1941, wherein you request an opinion on the procedure to be followed in filling certain vacancies in the Sixty-first General Assembly from Jackson County, Missouri. Your letter is as follows:

"The resignation of Honorable Samuel C. Hayden as a member of the House of Representatives of the 61st General Assembly from the Ninth Legislative District, Jackson County, and the resignation of Honorable Samuel T. Cross as a member of the House of Representatives of the 61st General Assembly from the Sixth Legislative District of Jackson County, have been received by me.

"Section 12859 of the 1939 Revised Statutes of Missouri provides that whenever the governor shall receive any resignation he shall, without delay, issue a writ of election to supply such vacancy. Section 12861 of the 1939 Revised Statutes of Missouri refers to 'The sheriff to whom any writ of election shall be delivered . . .'" (My emphasis). Section 12097 of the 1939 Revised Statutes of Missouri, which pertains to the Board of Election Commissioners in all cities

of this state now having or which hereafter may have three hundred thousand inhabitants and not over seven thousand inhabitants, provides that said board of election commissioners shall 'have charge of and make provisions for all elections, general, special, local, municipal, state, county, all primaries, and of all other of every description, to be held in such city or any part thereof, at any time.'

"An opinion from your office is requested on the following question: Should the writs of election to supply the vacancies in the Sixth and Ninth Legislative Districts, Jackson County, be directed to the Sheriff of Jackson County, Missouri, or should said writs be directed to the Board of Election Commissioners of Kansas City?"

Sections 12858 to 12862, R. S. Missouri, 1939, have never received any judicial construction by any of our courts. They appear to be statutes dealing only with a particular object relating to vacancies in the House of Representatives and the Senate.

In determining the apparent conflict between the two statutes which you point out, we are herewith quoting the pertinent sections. Section 12860, R. S. Missouri, 1939, is as follows:

"When any vacancy shall happen in the senate, for a district composed of more than one county, the writ of election shall be directed to the sheriff of the county first named in the law establishing the district; and when such vacancy shall happen in a senatorial district, which shall have been divided or altered

after the general election next preceding the occurrence of such vacancy, the writ of election shall be directed to the sheriff of the county first named in such old district; and when any vacancy shall happen in either house, for any county which shall have been divided after the general election next preceding the occurrence of such vacancy, the writ of election shall be directed to the sheriff of the old county."

Section 12861, R. S. Missouri, 1939, is as follows:

"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 statute relating to the Board of Election Commissioners in cities of three hundred thousand to seven hundred thousand inhabitants, being Section 12097, R. S.

Missouri, 1939, is voluminous and contains many matters which are not pertinent to your question. We herewith quote the portion which we deem relevant:

"* * * Upon the appointment of such commissioners, the county clerk of the county in which such city is situated, and the board of election commissioners or other custodians of said property shall, upon demand, turn over to such board of election commissioners all registry books, poll books, tally sheets and ballot boxes, heretofore used, and all other books, forms, blanks, stationery and property of every description in any way relating to registration or election, or the holding of elections, within said city. Said board of election commissioners shall make all necessary rules and regulations, not inconsistent with this article, with reference to the registration of voters and the conduct of elections; and shall have charge of and make provisions for all elections, general, special, local, municipal, state, county, all primaries, and of all other of every description, to be held in such city or any part thereof, at any time. The board, in addition to the other powers expressed in this article, shall have full power and authority to direct judges and clerks as to their duties in relation to election and the laws relating thereto and to compel compliance therewith; and two of the commissioners of opposite political parties shall have the power on any day of election, to remove any judge or clerk, who, in their opinion, is failing to perform his duty; and in the event of such removal, the commissioner or commissioners of the political party represented by the removed

person shall replace him with a
judge or clerk or deputy commission-
er belonging to such party. * * * *"

Chapter 76 of Article 23, R. S. Missouri, 1939, which deals with the registration and holding of elections in cities of three hundred thousand to seven hundred thousand inhabitants, was passed by the Legislature in 1937, page 294. The sections heretofore referred to, dealing with vacancies in the General Assembly, have been live statutes in our State for more than thirty years.

We approach your question from the standpoint of the rule that a later statute operates as a repeal by implication of an earlier one when there is a total repugnancy between the statutes. *Graves v. Little Tarkio Drainage District*, 134 S. W. (2d) 70.

We think the rule as given in the decision of *Young v. Greene County*, 119 S. W. (2d) 369, is applicable to the effect that when two statutes deal with the same subject matter inconsistent with each other so they both become operative, the later act will be regarded as a substitute for the earlier one and will operate as a repeal thereof, although it contains no express repealing clause.

We deem the two statutes in question wholly inconsistent with each other insofar as holding an election to fill vacancies in Jackson County in the General Assembly. A review of certain statutes in Article 23, Chapter 76, will suffice as proof of this statement.

By the terms of Section 12096, R. S. Missouri, 1939, we glean a clear intention on the part of the Legislature, that Chapter 76 of Article 23 shall prevail in the holding of every election in cities of three hundred thousand to seven hundred thousand inhabitants because said section contains the statement, "and the registration of voters and the conduct of elections held in such cities shall be governed by the provisions of this article and be subject to the general election laws of this state, so far as the same are not inconsistent or in conflict herewith."

Hon. Forrest C. Donnell

(6)
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October 29, 1941

Section 12110, R. S. Missouri, 1939, refers to the duty of the board of election commissioners to give ten days' notice, in two daily newspapers of the city, of the time and place of the election in each precinct of the city. In addition, Section 12194 of the same article and chapter, provides specifically that all laws and parts of laws in so far as they are inconsistent with the provisions of this article are hereby repealed. Referring to Section 12097, a portion of which is quoted supra, it is provided that the county clerk of the county shall turn over to the board of election commissioners all registry books, poll books, tally sheets and ballot boxes and all other forms and blanks in any way relating to registration and election, and the section further provides that the board of election commissioners shall have charge of and make provisions for all elections, general, special, local, municipal, state, county and all other of every description to be held in such city or any part thereof, at any time.

It has been held by the courts, and by the provisions of certain statutes, that all duties relating to elections formerly carried out by the county clerk, when statutes in the past referred to county clerk, are to be conducted by the board of election commissioners in cities and counties having registration.

CONCLUSION

We are of the opinion that, in construing your duties under Sections 12860 and 12861, R. S. Missouri, 1939, in so far as issuing writs for the filling of vacancies in the House of Representatives of the Sixty-first General Assembly, you should issue said writ or writs to the board

Hon. Forrest C. Donnell

(7)
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October 29, 1941

of election commissioners of Kansas City, directing them to conduct the election in all matters instead of the sheriff of Jackson County, Missouri.

Respectfully submitted,

OLLIVER W. NOLEN
Assistant Attorney General

APPROVED:

VANE C. THURLO
(Acting) Attorney General