

3. GENERAL ASSEMBLY: Upon opening and publishing the returns of the election for state officers, may proceed to other business.

January 21, 1941 ¹/₂₂

Senator George H. Miller
Senate Chamber
Jefferson City, Missouri



Dear Senator:

We acknowledge receipt of your request for an immediate opinion under date of January 10, 1941, which reads as follows:

"Will you please render me an opinion on the following question of law:

"In view of the fact that Section 3, Article 5, of the Constitution of the State of Missouri states, 'The returns of every election for the above named officers shall be sealed up and transmitted by the returning officers to the Secretary of State, directed to the Speaker of the House of Representatives, who shall, immediately after the organization of the House, and before proceeding to other business, open and publish the same in the presence of a majority of each House of the General Assembly, who shall for that purpose assemble in the hall of the House of Representatives. The person having the highest number of votes for either of said offices shall be declared duly elected; but if two or more shall have an equal and the highest number of votes, the General Assembly shall, by joint vote, choose one of such persons for said

office,' is there any legal and constitutional way whereby the State Legislature may either by motion or resolution, and before Section 3, Article 5, of the Constitution has been complied with, appropriate, pay out, or in any way disburse public funds or order the Treasurer of the State of Missouri to do so, for the purpose of Old Age pensions, Aid to Dependent Children, or Direct Relief?

"Thanking you for an immediate opinion, I remain."

Article V, Section 3, of the Constitution of Missouri, relates to all state officers, and provides that:

"The returns of every election for the above named officers shall be sealed up and transmitted by the returning officers to the Secretary of State, directed to the Speaker of the House of Representatives, who shall, immediately after the organization of the House, and before proceeding to other business, open and publish the same in the presence of a majority of each House of the General Assembly, who shall for that purpose assemble in the hall of the House of Representatives. The person having the highest number of votes for either of said offices shall be declared duly elected; but if two or more shall have an equal and the highest number of votes, the General Assembly shall, by joint vote, choose one of such persons for said office."

Section 10169, R. S. Mo., 1929, provides:

"After each election of governor, lieutenant-governor, secretary of state, state auditor, state treasurer, attorney-general, and superin-

tendent of public schools, the secretary of state shall, immediately after the organization of the house of representatives, deliver to the speaker thereof the returns of the votes given for the last named officers, who shall thereupon immediately notify the senate of the same, and that the house is ready to receive the senate in joint session to open and publish the same, whereupon the senate shall immediately repair to the hall of the house of representatives; and the speaker of the house shall, before proceeding to other business, in the presence of a majority of the members elected to each house of the general assembly so assembled in joint session, open and publish the same. In case of an alleged mistake in any return, or when more than one return has been made for any of said officers from any county or city or precinct, the two houses shall, in joint session, correct such mistake, if any, and determine which is the true and correct return by a vote of a majority of the members present, and the same shall be counted by the speaker, under the direction and control of the two houses thus assembled. The person having the highest number of votes for any of said offices shall be declared by the speaker of the house to have been duly elected."

Under both the above constitutional provision and statute enacted pursuant to same (hereinafter referred to as "provisions") it is made the duty of the Speaker of the House, before proceeding to other business, to open the returns and publish the same in the presence of the majority of each House of the General Assembly.

The House Journal (figures refer to pages) for the Third Day, Friday, January 10, 1941, reveals that a

Joint Resolution was adopted (27) by the members of the House and Senate in joint session (21), naming a committee to canvass the votes cast for state officers in the last General Election as submitted to the Joint Assembly, and to report same to the body (22).

It is shown that thereafter (27):

"The Joint Committee to canvass the returns of the General Election held November 5, 1940, proceeded to perform its duty in the presence of a majority of the members of the Senate and the House of Representatives."

The Majority Committee report was adopted (32-33) by the members of the House and Senate in Joint Session (27), and is in part as follows (28,29,30):

"TO THE JOINT SESSION OF THE SENATE AND HOUSE OF REPRESENTATIVES OF THE STATE OF MISSOURI:

"Your Committee, duly appointed by resolution, by the Joint Session of the General Assembly of the State of Missouri, to canvass the votes cast at the last general election held in the State of Missouri, begs leave to report as follows:

"We find that a tabulation of the returns as reported to the Speaker of the House of Representatives, after having examined, canvassed and cast up all of said returns in the presence of the Honorable Morris E. Osburn, Speaker of the House of Representatives of the Sixty-first General Assembly, shows the following results of said election:

"(Hereinafter follows the results of the election for Senator in Congress for Missouri; for Lieutenant-Governor;

for Secretary of State; for State Auditor; for State Treasurer; and for Attorney-General.)"

The Committee further reported that it had carefully considered the returns and canvassed the votes cast at the election for the office of Governor and had in many instances found alleged mistakes in the returns and had been advised of various irregularities and violations of the law in connection with the election. That for said reasons they were unable to definitely and correctly ascertain and determine who had received the highest number of votes cast in the State of Missouri for the office of Governor.

The Committee further reported that a petition had been filed with the General Assembly alleging that the purported returns in so far as they pertained to the office of Governor were incorrect, and praying that the General Assembly investigate the election in order that the General Assembly might ascertain and determine who received the highest number of votes for the office of Governor.

The Committee further found that resolutions had been filed by the Democratic State Committee and by the Democratic Central Committees of 101 counties and the City of St. Louis, requesting a general investigation of the election in so far as it pertained to the office of Governor.

By reason of all these findings the Committee recommended that a general investigation be made of the general election held in the State of Missouri on November 5, 1940, only in so far as it pertained to the office of Governor, in order to determine what was the true and correct return of the votes for Governor of this State and ascertain the person who received the highest number of votes for the office of Governor.

The Speaker of the House, Honorable Morris E. Osburn, in the presence of a majority of each House of the General Assembly thereafter opened and published the returns (34,35):

"Gentlemen of the Session:

"The returns of the late election for State Officers having been opened and canvassed and cast up in accordance with the provisions of Section 3, Article 5, of the Constitution of the State of Missouri, I now have the honor to announce the results of said election, as follows:

"(Hereinafter follows the results of the election for Senator in Congress for Missouri; for Lieutenant-Governor; for Secretary of State; for State Auditor; for State Treasurer; and for Attorney-General.)

* * * * *

"Now, therefore, I, Morris E. Osburn, Speaker of the House of Representatives, declare that Harry S. Truman has been elected Senator in Congress for Missouri for a term of six years.

"That Dwight H. Brown has been elected Secretary of State for a term of four years.

"That Forrest Smith has been elected State Auditor for a term of four years.

"That Wilson Bell has been elected State Treasurer for a term of four years.

"That Roy McKittrick has been elected Attorney-General for a term of four years.

"They having received the highest number of votes cast for said offices, respectively, at the general election held on the fifth day of November, 1940, as shown by the returns of said election

just opened and published by me,
Speaker of the House of Represent-
atives.

MORRIS E. OSBURN
Speaker. "

Funk and Wagnalls, New Standard Dictionary
defines the word "open" as follows:

"To impart freely the knowledge of;
reveal; disclose * * * * *

The word "publish" is defined generally in
51 C. J., 88, as follows:

"To make known; to make known gen-
erally; to make known to people
generally; to make known what before
was private; to make public; to make
publicly known; to proclaim."

The Supreme Court of Missouri in the case of
In Re Publishing Docket in Local Newspaper, 266 Mo. 48,
187 S. W. 1174, 1175, defined the term "publish," in the
following manner:

"The word 'publish' ordinarily means
to make public."

By virtue of the above "provisions" it became
the duty of the Speaker of the House, as Constitutional
Agent of the General Assembly, to reveal the returns of
the election for all state officers and to make them
known to the members thereof. An examination of the
"provisions" discloses no prescribed method as to how
he shall make the returns known. The method is left to
his sound discretion, and it matters not whether he
makes them known by writing, speaking, publishing or
any other means of communication. The essential thing
is that he not keep the results of the returns in his
personal possession, but that he impart them to the
General Assembly. When he has therefore made same known
to the General Assembly he has completed his duty within

the meaning of the "provisions," and the General Assembly may then proceed to exercise its legal functions.

Unimpeachable evidence that the returns of the election for all state officers, including that of Governor, were made known to the General Assembly, is shown by the report of the Minority Joint Committee, which failed of adoption (31).

The provisions herein set out make it a condition that the Speaker open and publish the returns before proceeding to other business. This was done. There is, however, no requirement that anyone be declared elected before the General Assembly proceeds to other business. The language of the "provisions" are so clear on this point there is no room for construction. *Keller v. State Social Security Commission*, 137 S. W. (2d) (Mo. App.) 989, 1. c. 990.

From the foregoing, we are of the opinion that the Speaker of the House of Representatives has opened and published the returns of the election for state officers in compliance with Section 3, Article V of the Missouri Constitution, and Section 10169, R. S. Mo., 1929, and therefore that the General Assembly may proceed to appropriate public funds for the purpose of old age pensions, aid to dependent children, direct relief, and proceed to any other business it may desire.

Respectfully submitted,

MAX WASSERMAN
Assistant Attorney-General

APPROVED:

ROY MCKITTRICK
Attorney-General

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