

ELECTIONS: County clerk furnishes ballots. Sheriff posts notice of election on vacancy of member of the legislature.

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Attention: Mr. W. T. Bellamy.

Gentlemen:

We are in receipt of your letter of July 16, 1942, in which you request an opinion as follows:

"I am in receipt of your letter of the 14th inst. enclosing copy of opinion dated July 7th to Honorable Dwight H. Brown, Secretary of State, and also supplemental opinion regarding special election of representatives for General Assembly; also copy of your other opinion to the Prosecuting Attorney of Cass County, and thank you for the information therein contained. However, the particular matter that was bothering me is whether or not the notice of this election should be posted. That is the way I read the statute, but I would like to have your opinion about that. In the next to the last paragraph on page 4 of your opinion of July 7th to the Secretary of State, it is stated 'From these sections it would appear that a special election is conducted in the same manner and governed by the same law as a general election', etc. From this I am in doubt as to whether it is your opinion that the notice should be published in the same manner or whether

notices should be posted.

"From the above quoted portion of your opinion of July 7th, I judge it is your opinion that returns of this election should be made to the County Clerk as in case of general election as there is nothing in the statute that directs otherwise. However, in view of the statement in the statute about putting up notices, it seems to me that with reference to this election we might be required to put up notices by posting three in each municipal township but that the results of the election should go to the County Clerk.

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"P. S. Since dictating the foregoing letter I have learned that our County Clerk is contending that it is not his duty but the duty of the Sheriff to have ballots for this special election printed. I will therefore appreciate it if you will give me your opinion.

"1. Whether the notice of election should be posted or published in a newspaper;

"2. Whether it is the duty of the County Clerk or the Sheriff to have the ballots printed for the election;

"3. Whether the returns of the election should be filed by the Judges and Clerks in the office of the County Clerk or in the office of the Sheriff."

In reference to your first question we set out the following:

Section 12858 R. S. Missouri, 1939, partially reads as follows:

"If any member elected to either house of the general assembly shall resign in the recess thereof, he shall address and transmit his resignation, in writing to the governor;
* * * * *

Section 12859 R. S. Missouri, 1939, reads as follows:

"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."

By reason of Section 14, of Article IV of the Constitution of Missouri, the legislature enacted Section 12860 R. S. Missouri, 1939, which reads 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 12361 R. S. Missouri, 1939, reads 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 above section specifically states:

" * * * 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, * * ."

There is no provision for the publication of a notice, as set out in the general election laws.

Sections 12858 to 12861, supra, inclusive, are special statutes referring to elections to fill vacancies in either house of the general assembly and the regular election laws are general laws. Where a special statute and a general statute apply to the same subject matter the special statute governs.

Section 11492 R. S. Missouri, 1939, is part of the general provisions and provides that the sheriff shall give notice under the writ of election to fill any vacancy, but Section 12861, supra, specifically states that the notices are "to be put up." Section 11546, R. S. Missouri, 1939, which applies to primary elections, specifically excepts special elections. Since the special laws as to vacancies in both the house and senate of the legislature have been specifically set out that law must govern.

It has been held that where one of two conflicting statutes must prevail, a special statute, all else being equal, must take precedence over the general law." (Collins v. Twellman, 126 S. W. (2d) 231, 344 Mo. 330.)

Section 12861, supra, in referring to notices being put up in the different counties in the district, specifically says:

"* * * 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, * * * * ."

Although the above section specifically states "copies" it refers to the sheriffs of each of the counties of the district, and when the legislature saw fit to say "copies" it referred to more than one sheriff. We cannot say that the section provides for the putting up of more than one in any county in the district by each sheriff of each county. The section does not provide for the putting up of more than one notice in each county.

According to Webster's New International Dictionary, Second Edition, the word "put" is defined as meaning: "Fixed, set, in place." This authority also defines the word "place" as: "To put in a particular place or spot." Both "place" and "put" are synonymous with the word "post."

In the case of Pedro v. Grootemaat, 183 N. W. 153, 174 Wis. 412, held that under a statute which required posting, as well as publishing of statement of delinquent lands and notice of tax sales is essential to validity of tax deed; "post" being a meaning distinct from what is implied by "publication."

In other words, the sheriff may post or put up a notice in the county in the district and not publish the same in a newspaper for the reason that the section does not require publication in a newspaper.

In answer to your second question, as to whether or not the county clerk, or the sheriff, should print and furnish the ballots, and in answer to your third question, as to whether or not the election returns should be made to the sheriff, or the county clerk, we set out the following special sections, 12858 to 12861, inclusive, supra, applying to special elections and the filling of vacancies in either the House of Representatives or the State Senate. These are the only sections on that subject. Nothing is mentioned as to who shall furnish the ballots, or as to whom the return shall be made under those sections.

Since the general laws of election are in force, the only exceptions are the special election laws above set out. The special election sections, 12858 to 12861, inclusive, supra, only apply to the question of proclamation and notice of election, and not to the conducting of the election in general.

The courts have the duty, in construing two or more statutes relating to the same subject, to read them together, and then harmonize them, if possible, and to give force and effect to each, and the rule applies, not only to acts passed at the same session of the legislature, but also to the acts passed at prior and subsequent sessions. (State ex rel Central Surety Insurance Corp., v. State Tax Commission, 153 S. W. (2d) 43.)

Under Section 11594 R. S. Missouri, 1939, it is the duty of the county clerk of the county court of each county, to provide printed ballots for every election for public officers, and it was held in the case of Bradley v. Cox, 271 Mo. 438, 197 S. W. 88, that no ballot shall be cast or counted except those officially presented. Under Section 11614 R. S. Missouri, 1939,

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the poll books which show the result of the election must be returned to the clerk of the county court in the county.

We find no provision for the sheriff to furnish ballots, except that he must deliver them, after being furnished by the county clerk, as set out in Section 11598 R.S. Missouri, 1939.

CONCLUSION

It is, therefore, the conclusion of this department that the notice of election should be posted in the county, and not be published in a newspaper.

It is further the opinion of this department that it is the duty of the county clerk to have the ballots printed for the election.

It is further the opinion of this department that the returns of the election should be filed by the judges and clerks in the office of the county clerk, and not in the office of the sheriff.

Respectfully submitted

APPROVED:

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WJB:RW