

ELECTIONS: July 2, 1942, is the last day for filing initiative petitions.

March 6, 1942

Honorable Dwight H. Brown
Secretary of State
Jefferson City, Missouri



Dear Mr. Brown:

We acknowledge receipt of your letter requesting an opinion, which reads as follows:

"The deadline for filing initiative petitions is four months prior to the general election.

"May I be favored with your opinion as to the date next July? I plan to keep the office open until 11:59 P. M., on that date."

Section 57 of Article IV of the Missouri Constitution provides:

"* * * * * Initiative petitions shall be filed with the Secretary of State not less than four months before the election at which they are to be voted upon. * * * * *"
(Underscoring ours)

The General Election this year, at which any initiative proposition will be voted upon, falls upon November 3, 1942.

There is hardly any doubt but that the word "month", as used in the Constitution, means calendar month. Section 655, R. S. Missouri, 1939, provides:

"The construction of all statutes of this state shall be by the following additional rules * * * * *; third, the word 'month' shall mean a calendar month, * * * * *."

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While this statute, by its own terms, is said to apply to "construction of statutes," yet in *Beauveau v. City of Cape Girardeau*, 71 Mo. 391, the Supreme Court applied other provisions contained therein relative to computation of time in construing what is now Section 12 of Article V of the Constitution, fixing the time within which the Governor may approve or disapprove a bill.

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However, in *Union Trust & Saving Bank v. City of Sedalia*, 300 Mo. 399, 413, the Court said Section 655, which also defines "year" to mean calendar year, "* * * may have no application as to the word 'year' in the Constitution, because the statute is made applicable to statutes."

Whether the statute may be applied or not does not seem important to me. The universal rule for construing constitutional provision is to ascertain the intent of the people. The initiative amendment was adopted November 3, 1909. The Gregorian Calendar was adopted by the English Parliament in 1751 by an act becoming effective September 3, 1752. (Funk & Wagnall Dictionary) This calendar, our present, has been the one used in this country since that time.

However, even though the Gregorian Calendar was adopted at an early date, it seems that the courts in England continued to hold that the word "month" in laws, meant the lunar month of twenty-eight (28) days. This construction was changed by statute in 1850 (26 R. C. L. p. 732, Sec. 6) to calendar month. In this country the English common law rule was followed at an early date but, beginning in 1794 in Pennsylvania, such was rejected and since that case it has almost been a uniform rule that reference to a month in law means calendar month (*Guaranty Trust & Safe Deposit Co. v. Buddington*, 12 L.R.A. 770 (Fla.) where cases are collected.

Therefore, there is no cause to believe that the people had anything in mind in 1909 except the calendar month, when they used the word "month" in the initiative amendment.

Section 655 provides that time shall be computed by "excluding the first day and including the last, if the last day be Sunday, it shall be excluded." This section also provides that rules therein stated are to "apply" unless such construction be plainly repugnant to the intent of the legislature, or of the context of the same statute." Thus it appears, whether the statute may be applied to the Constitution or not, it lays down no hard and fast rule which must be followed.

We do not think it is to be followed in computing the time before which an initiative petition must be filed. The plain context of Section 57 of Article IV precludes the application of such rule. The provision designates that such petitions "shall be filed" at a time "not less than four months before the election."

In 62 C. J., Section 33, page 986, it is stated:

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"Where a period of time during or within which an act may or must be performed is referred to as being 'before', * * * * a designated day or date, such words are generally construed as words of limitation of time, and as excluding, in the computation of the specified period, the day or date designated, and requiring the act to be performed prior to that day or date; and in such a case the general rule excluding the first day and including the last does not apply. * * * * *"

The text then states:

"* * * This construction, however, is not of universal application, and the effect to be given to such a word depends on the intention with which it is used, as manifest by the context and considered with reference to the subject to which it relates; and, accordingly, it may be construed as either inclusive or exclusive of the day mentioned, in accordance with the intention of the particular case.
* * * * *

In *Bailey v. Lubke*, 8 Mo. App. 57, the act was required to be done "ten days before" a designated date. The court, while recognizing the rule, stated in Section 655, said l. c. 60:

"When, as in the present case, it is said that an act is to be done a certain number of days before a given date, we do not think that, in the plain meaning of the phrase, it is intended that both the date named and the day of doing the act should be excluded. What is to be done one day before the 10th of the month, according to the plain, ordinary meaning of the phrase, is to be done on the day before, -- that is, on the 9th. * * * * *
* * * * *"

It thus appears the court held "before" to require exclusion of the date named in computing the time.

However, in *Jewell Realty Co. v. Dierks*, 18 S. W. (2d) 1043 (Mo. Sup.) the opposite rule was applied. There the parties had "until" (a word of similar import to before) June 26th to act. They acted on the 26th and the court ruled such to be within the allotted time, by consulting the context and finding such word to be inclusive rather than exclusive.

Were only the word "before" used in the initiative amendment, we might hesitate to hold it to be exclusive, but when we find such word coupled with the phrase "not less than" four months "before," there can be no doubt that the date designated - that is, November 3, 1942, must be excluded in computing the four months time, and this precludes resort to the rule of exclude the first date and include the last, for the reason that the first date is already excluded.

X The rule to be followed in computing calendar months is stated in 62 C. J., page 970, Section 18, as follows:

"* * * it runs from a given day in one month to a day of the corresponding number in the next or specified succeeding month, * * * * *."

Stated otherwise (In Re Custer, 55 Fed. (2d) 718, 719) it,

"* * * denotes a period terminating with the day of the succeeding month numerically corresponding to the day of its beginning, less one."

These rules are identical and the same result is reached by application of ~~either~~.

Excluding November 3, 1942, by counting back four months from the date, that is, from midnight November 3, 1942, we arrive at, that is to, the end of the day of July 2, 1942, the day of the corresponding number in the fourth preceding month.

Excluding November 3, 1942, that is, counting back four months from November 2, 1942, the day of beginning, we arrive at July 2, 1942, the day of the fourth preceding month that corresponds with the beginning date, less one, which would make the time midnight July 2, 1942.

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Hon. Dwight H. Brown

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CONCLUSION

It is, therefore, our opinion that the last day for filing initiative petitions with the Secretary of State expires at midnight, July 2, 1942.

Respectfully submitted,

LAWRENCE L. BRADLEY
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APPROVED:

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LLB/rv