

ELECTIONS: In re election to fill vacancy in
STATE REPRESENTATIVES: office of State representative.

July 10, 1942

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Hon. G. Chamberlin
Prosecuting Attorney
Cass County
Harrisonville, Missouri



Dear Mr. Chamberlin:

This is in reply to yours of recent date wherein you request an opinion from this department on the following statement of facts:

"I am herewith enclosing a copy of a Writ of Election which was sent to our sheriff for action. The original was duly signed by the Governor, Secretary of State, Chief Clerk and sealed by the state in regular order.

"This is based on Sections 12858-12862 inclusive, but the point that we are not clear on is what the Governor intends to have done. He states in the notice that the election to supply the vacancy is to be held on Tuesday, August 4; then states that at the time of the general election next preceding the last above date and that the sheriff is to issue a proclamation for holding an election, etc.

"I notice in the paper, The Kansas City Star, that the Governor was ordering a special election to be held on August 4 along with the primary.

"I would like to have your interpretation as to what the writ really means, when

this election is to be held and if held as a special election on August 4, whether or not the additional election might be held in November on the same subject."

Under Section 14 of Article IV of the Constitution, writs of election to fill vacancies which occur in either house of the General Assembly shall be issued by the Governor.

Under Section 12859, R. S. Mo. 1939, which seems to be an enabling act to the foregoing provision of the Constitution, provides 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."

According to the writ of election which the Governor has issued it appears that the Representative of Cass County has resigned. Therefore, the Governor has invoked the foregoing provisions of the Constitution and Statutes.

Section 12860, R. S. Mo. 1939, provides 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."

You will notice the writ of election follows the language of this section. The particular language to which you refer, that is: "at the time of the general election next preceding said last above mentioned date" refers to the boundary of the district and not to the date. In other words, it is the duty of the Governor to direct the writ, in cases of vacancies in the office of senator, to the county first named in the law establishing the district and the boundaries of that district are those which existed at the time of the general election next preceding the notice of the special election.

We do not think that this particular provision is pertinent and probably is not necessary in a case where a vacancy exists in a county such as Cass. We assume that it is put in there on account of the way the statute reads.

You will note that the Governor directs this election to be held on August 4, 1942. The fact that this election is to be held on the date of the primary is merely coincidental and the ballot for the special election will be separate and distinct from the primary ballot. In our research on this question we find that such an election is held under the same rules and regulations that a general election is held. That being the case there would be no prohibition in having the same election officials for both elections. This election is for the unexpired term of the present incumbent.

Under Section 2, of Article IV of the Constitution the term of the representative is two years. Therefore, the

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special election will be for the term expiring at the end of this year. This special election does not affect the nomination and election of the representative for the next biennium. That being the case, any person desiring to be nominated and elected for the next term, should follow the statutory provisions for nominations in the primary in order to have his name placed on the general election ballot to be voted on in November for the term which will begin when the next session of the General Assembly convenes in 1943.

Respectfully submitted,

TYRE W. BURTON
Assistant Attorney-General

TWB:CP

APPROVED:

VANE C. THURLO
(Acting) Attorney-General