

GOVERNOR - Writs directing election to fill vacancies in the House of Representative caused by resignation of a Representative from St. Louis City, Missouri, should be directed to the Board of Election Commissioners of the City of St. Louis, Missouri.

July 9, 1942

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

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Dear Governor Donnell:

The Attorney General acknowledges receipt of your letter of July 9, 1942, wherein you request an opinion on the procedure to be followed in filling certain vacancies in the Sixty-first General Assembly due to the resignation of a Representative of the city of St. Louis, Missouri.

Your letter is as follows:

"The resignation of Honorable J. Glennon McKenna, as a member of the House of Representatives of the Sixty-first General Assembly of the State of Missouri from the fifth representative district, Saint Louis City, Missouri, has been received by me, and a vacancy exists in the membership from which he did by said resignation resign.

"Section 12859 of the Revised Statutes of Missouri of 1939, in reference to a vacancy in either house of the general assembly, provides in part as follows:

"Whenever the governor shall receive any resignation * * * he shall, without delay, issue a writ of election to supply such vacancy."

"Your opinion, as soon as possible is respectfully requested on the following question:

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"To whom should the writ of election be issued to supply the vacancy from the fifth representative district, Saint Louis City, Missouri?"

Sections 12859 and 12860 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 the vacancies in the House of Representatives and the Senate.

Article 24 of Chapter 76 of the Revised Statutes of Missouri, 1939, pertaining to permanent registration and elections in cities of 600,000 or more, provides the manner in which the writs of election shall be served. Under Section 12197 R. S. Missouri, 1939, the Board of Election Commissioners is created in all cities of 600,000 population. In view of the fact that this particular section is voluminous and contains matters which are not pertinent to the question, I will merely cite, and quote, that part of such section which pertains to the matter about which you inquire. The following will be found in the aforesaid Section.

"The board shall maintain an office, which shall always be kept open during business hours of every day, Sundays and legal holidays (other than election days) excepted. Upon the appointment of the commissioners, the preceding board or other custodians of the property of such board shall turn over to such 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. * * * * *

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Section 12283 R. S. Missouri, 1939, refers to the powers of the Board of Election Commissioners in cities of 600,000 or more and provides as follows:

"The board 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 to be held in such city or any part thereof."

In other words, it will be seen that upon the appointment of the Board of Election Commissioner, or upon a new board being appointed, that all of the property held by such former board shall be turned over to the incoming Board of Commissioners.

Further, it will be seen by Section 12283, cited above, that the Board of Commissioners shall make all the necessary rules and regulations and control the conduct of all elections in such cities, or parts thereof. This Article 24, cited above, is a special provision pertaining to cities of 600,000 or more, and there is only one city of that size in the State of Missouri, and that is the city of St. Louis. It was apparently the intention of the legislature in passing such Article, that the Board of Election Commissioners of the city of St. Louis should have complete control of the elections in such city. Article 24 of Chapter 76, R. S. Missouri, 1939, which deals with the registration and holding of elections in cities of 600,000 or more inhabitants was passed by the legislature in 1937. The Sections referred to, heretofore, Sections 12859 and 12860 have been live statutes in our State for many years. It is apparent that Section 12859 and Section 12860, supra, conflict with the provisions of Article 24, of Chapter 76, and we think that the rule as given in the decision of *Young v. Greene County*, 119 S. W. (2d) 369, is applicable to the effect that

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when two statutes deal with the same subject matter and are inconsistent with each other 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 repeal clause. We deem the two statutes wholly inconsistent with each other, as far as holding an election to fill vacancies in the office of a Representative of St. Louis City in the Sixty-first General Assembly.

This office on October 29, 1941, rendered an opinion addressed to you that in the case of a vacancy in the House of Representatives from Jackson County the writ, or writs, of election should be issued to the Board of Election Commissioners of Kansas City, and, although different statutes govern in Jackson County and the city of St. Louis, these Sections in force and effect are practically the same.

CONCLUSION

Therefore, it is the opinion of this Department that the writ of election to fill a vacancy in the House of Representatives, caused by the resignation of Honorable Glennon McKenna, a member of the House of Representatives from the Fifth Representative District of St. Louis, Missouri, should be issued to the Board of Election Commissioners at St. Louis, Missouri.

Respectfully submitted

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APPROVED:

VANE C. THURLO
Acting Attorney General

JSP:RW