

NAVAL MILITIA:

Interpretation of Section 15093, R. S. Mo. 1939. Method of electing commander, or captain commanding naval militia.

July 17, 1942

7-17
FILED
24

Hon. Forrest C. Donnell
Governor of Missouri
State Capitol Building
Jefferson City, Missouri

Dear Governor Donnell:

This is to acknowledge receipt of your letter of July 14, in which you request the opinion of this department. Your letter reads in part as follows:

"There has arisen in this office the question of what is the manner in which an election of the commander, or captain commanding the naval militia, shall be held. I am not certain whether the elections mentioned in the concluding sentence of Section 15093 Revised Statutes of Missouri of 1939 include the election of the commander, or captain commanding the naval militia, or only the elections of commissioned officers of divisions. I respectfully ask of you your opinion upon the following questions: * * *"

In the remainder of your letter of request you have submitted four questions. We shall answer your questions in the order submitted.

Since your questions pertain particularly to the construction of Section 15093, R. S. Missouri 1939, we quote same in its entirety:

"The commander, or captain commanding the naval militia, shall be elected by the line officers. The executive officers, navigating and ordnance officers, the signal officers and staff officers shall not be entitled

to a vote at such elections. Commissioned officers of divisions shall be elected by the members of each division or appointed by the commander-in-chief upon the recommendation of the commanding officer. Such elections shall be held in the manner prescribed by the law for the election of commissioned officers of infantry."

"Question 1. Do the elections mentioned in the concluding sentence of Section 15093 Revised Statutes of Missouri of 1939 include the election of the commander, or captain commanding the naval militia?"

From a reading of the quoted statute, we are of the opinion that the words "such elections" used in the concluding sentence of Section 15093, refer to all of the elections mentioned in said section and not to any particular election referred to therein. It will be noted that the same words "such elections" are used in the sixth line of said section in providing that the executive officers, navigating and ordnance officers, the signal officers and staff officers shall not be entitled to vote at the election of the commander or captain commanding the naval militia, and the term "such elections" must refer to the election of the commander or captain commanding the naval militia for the reason that from its context it is the only election to which the words could possibly apply.

"Question 2. If the elections mentioned in the concluding sentence of Section 15093 Revised Statutes of Missouri of 1939 include the election of the commander, or captain commanding the naval militia, is it necessary that the election of the commander, or captain commanding the naval militia occur in a meeting?"

Since we have answered your first question in the affirmative, you then desire to have our opinion as to how the election of the commander or captain commanding the naval militia shall be held; whether at a meeting or by some other method. We are of the opinion that the election of the commander or captain commanding a naval militia shall be held in a meeting, for the reasons hereinafter stated.

"Question III. If the elections mentioned in the concluding sentence of Section 15093 Revised Statutes of Missouri of 1939 include the election of the commander, or captain commanding the naval militia, but it is not necessary that the election of the commander, or captain commanding the naval militia occur in a meeting, can said election be held by mail?"

Since we have held that the election of the commander or captain commanding the naval militia must be held in a meeting, said election necessarily could not be held by mail.

"Question IV. If the elections mentioned in the concluding sentence of Section 15093 Revised Statutes of Missouri of 1939 do not include the election of the commander, or captain commanding the naval militia, what is the manner in which is held an election of the commander, or captain commanding the naval militia?"

Since it is our opinion that the election of the commander, or captain of the naval militia is governed by the concluding sentence of Section 15093, the election should be held in the manner prescribed by Section 15027, R. S. Mo. 1939, in the same manner prescribed for the election of commissioned officers of the Missouri National Guard. There is no reason to assume that the Legislature, in using the words "such elections" in the concluding sentence of said section, referred only to the election

July 17, 1942

of commissioned officers of divisions and not to the election of the commanding officer. If such term referred only to commissioned officers, the Legislature has, thereby, provided for no method of electing the commander or captain commanding the naval militia.

The method for the election of officers of the national guard, under Section 15027, provides for a meeting, designates who is to preside at such meeting, and requires that a majority of those entitled to vote at such election shall constitute a quorum, and that a majority of the votes cast shall be necessary to elect. Said section also provides for separate ballots and sets up the necessary machinery for such election. Election by mail is thereby precluded.

CONCLUSION

It is, therefore, our opinion that the method for electing the commander or captain commanding the naval militia is as provided in Section 15027, R. S. Missouri, 1939.

Respectfully submitted,

COVELL R. HEWITT
Assistant Attorney General

APPROVED:

VANE C. THURLO
(Acting) Attorney General

CRH:NS