CONSTITUTIONAL CONVENTION: March sixth last date for filing certificates of nomination of delegates.

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February 13, 1943

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

Dear Mr. Brown:

Under date of February 10, 1943, you wrote this office requesting an opinion as follows:

> "Inquiry has been made in connection with election of delegates to the constitutional convention, which the Governor has set to be held on April 6, 1943. The inquiry requests deadline for filing nominations for district delegate, and also for delegate-at-large. What is the final limit for filing with me, by petition for delegate-at-large? What is the final limit for filing with me for district delegate?"

Provision is made in Section 3 of Article XV of the Constitution of the State for calling a constitutional convention and electing delegates to the convention. Portions of this section of the Constitution pertenant to your question are here set out:

> "The general assembly may at any time authorize by law that a vote of the electors of the state be taken upon the question, 'Shall there be a convention to revise and amend the Constitution?' which shall be submitted to the electors on a separate ballot without party designation of any kind, at either a special or general election, as the general assembly may provide, and if a

Majority of the electors voting for and against the calling of a convention shall vote for a convention, the governor shall issue writs of election to the sheriffs of the different counties, ordering the election of delegates to the convention, on a day not less than three nor more than six months after that on which said question shall have been voted on. * * * * * * * * * * * * * *
In order to secure representation from different political parties in each senatorial district, each political party as then authorized by law to make nominations for the office of state senator in each senatorial district shall nominate only one candidate for delegate from such senatorial district, and such candidate shall be nominated in such manner as may be prescribed by the senatorial committee of the respective parties, <u>and a certificate of nomination shall be filed in the office of the secretary of state at least thirty days before such election</u>, * * * * * * * * * * * * * * *
and all candidates for delegates-at-large shall be nominated by nominating petitions only, <u>which shall be filed in the office of the secretary of state at least thirty days before any such election</u> * * * * * * * * * * * * "
(Underscoring Ours)

By this section of the Constitution the certificates of nomination for all candidates, which are required to be filed in the office of the Secretary of State, are to be filed at least thirty days before the day of the election.

The rule for the computation of time is found in the fourth clause of Section 655 R. S. Mo., 1939:

> " * * * * * * * * fourth, the time within which an act is to be done shall be computed by excluding the first day and including the last, if the last day be Sunday it shall be excluded; * * * * * * * * "

An excellent illustration for the operation of this rule is found in the case of Stutz v. Cameron, 254 Mo. 340, at l.c. 352:

> "Under this rule, we should not count October 17th, because it was the day upon which the notices were posted. We must know that October has thirty-one days. Excluding the 17th of October, we would have left fourteen live days in October, and the petition was, under the notices, to be presented on November 7th which gives seven more days or in all twenty-one days. This of course on the theory that we count Monday the first day of the term as a day. If we do not count Monday as a part of the term of notice, then we still have twenty days' notice, if under the statute we can count Sunday. * * * * * * * * * "

This was a case in which the question arose as to whether or not certain notices which were required to be posted twenty days before the first day of a term of court were posted in time.

Applying the rule to your question and treating April sixth as the first day, excluding it from the

count we have five live days in April. This date requires twenty-five days in the month of March, which would fix the day as Sunday, March 7, 1943. The statute provides that when Sunday is the last day upon which an action may be done it shall be excluded. In the case of State ex rel. Bulger v. Souther, 278 Mo. 610, it is pointed out that this is a rule of computation at local citation 619:

> " * * * * * * The statute (Sec. 8057, R. S. 1909) prescribes the applicable rule for computing time as follows: 'Fourth, the time within which an act is to be done shall be computed by excluding the first day and including the last, if the last day be Sunday it shall be excluded.' December 1, 1918, fell on Sunday. Had it been any other day of the week it would have been the last day for service under the statute. Being Sunday the statute requires it to be excluded. It is at this point a difference of opinion arises. Respondent contends that when it is excluded, Saturday, November 30th, became the last day for service. Respondent thus seeks to exclude Sunday, December 1st, from the <u>time for service</u>. This loses sight of the language and purpose of the statute. What the statute lays down is a rule for <u>computing</u> the time within which an act is to be done. The words 'Sunday shall be excluded' means it shall be excluded from the <u>computation</u>, not from the time within which the act shall be done. Excluding Sunday, December 1, 1918, from the <u>computation</u> leaves Monday, December 2nd, as the last day upon which service could have been made. The construction contended for by respondent was given this statute by this court at the January term, 1870. (Patrick v. Faulke, 45 Mo. 312.)

At the March term, 1870 (Bank v. Williams, 45 Mo. l.c. 19), as is pointed out in Jordan v. Railroad, 92 Mo. App. l. c. 85, the Patrick case was 'virtually overruled.' In Keys v. Keys, 217 Mo. l. c. 65, in an opinion by Graves, J., this view of the Court of Appeals is approved and abundant other authorities cited. In Walker v. Sundermeyer, 175 S. W. l. c. 187, in an opinion by Roy, C., Keys v. Keys, was approved and followed. There are other decisions in point announcing the same rule. The statute is not fairly susceptible of any other construction. State ex rel. v. McElhinney, 199 Mo. l. c. 80, is relied upon by respondent. It is to be observed that the court was not deciding the point now in issue. The Statement there made of the rule did not affect the decision in that case. The fact that Sunday was excluded answered the argument the court was examining, and no occasion arose to discriminate between the rule now contended for by respondent and that announced in the cases already cited.

"Applying the settled rule, the last day for personal service in the contest proceeding was Monday, December 2, 1918. * * * * "

This case involved the serving of notice which was required to be served within twenty days after a certain date and the last day was Sunday. Still applying the rule and excluding Sunday, March 7, 1943, from our computation Saturday, March 6, 1943, would be fixed as the last day for filing certificates of nomination.

It might be urged that in applying the rule we should reverse our count and start with Sunday, March seventh, and excluding it, Monday, March eighth, would be the last day for filing. However, if this were done certificates filed on Monday would not be filed at least thirty days before April 6, 1943, as is required by the Constitution.

CONCLUSION

It is, therefore, the conclusion of the writer that Saturday, March 6, 1943, is the last date for filing in the office of the Secretary of State certificates of nomination for district delegates to the Constitutional Convention and it is also the last date for filing certificates of nomination for delegates-at-large to the Constitution.

Respectfully submitted,

W. O. JACKSON
Assistant Attorney-General

APPROVED:

ROY McKITTRICK
Attorney-General

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