

ELECTIONS: Eight questions concerning the selection of delegates to the Constitutional Convention.

February 12, 1943.

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Honorable Floyd E. Jacobs
Attorney at Law
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Kansas City, Missouri

Dear Mr. Jacobs:

The Attorney-General wishes to acknowledge receipt of your letter of February 10th in which you request an opinion of this Department. Your request, omitting caption and signature, is as follows:

"The Sheriff of this county received from the Governor on yesterday writ of Election relating to the election of delegates to the Convention to revise and amend the Constitution, providing that it be held on Tuesday, April 6, 1943, and commanding the Sheriff to issue his proclamation or notice for holding the election accordingly, giving ten days' notice thereof, and that he certify to the Governor the execution of this writ, and how he executed same.

"Section 4, Art. XV of the Constitution of Missouri, provides that when the people of the State vote for a constitutional convention, the Governor shall issue writs of election to the sheriffs of the different counties, ordering the election of delegates, and the assembling of such convention, as is provided in Section 3 of Art. XV.

"In the latter Section of the Constitution, it is again provided that the Governor shall issue writs of election to the

Sheriffs of the different counties, ordering the election of delegates to the convention, and providing the time within which the Governor shall issue such writs.

"The question we have in mind is whether or not the Sheriff should issue the proclamation commanded in the writ. In Kansas City, there is a Board of Election Commissioners, and likewise another Board of Election Commissioners covering the balance of Jackson County outside of Kansas City.

"In the Writ of Election issued by the Governor to the Sheriff, he commands the Sheriff to issue the proclamation giving 'ten days' notice thereof.' There is no such provision in the Constitution relating to constitutional conventions, but in Section 11492 Rev. Stat. 1939, there is a provision that when the Governor issues a writ of election to fill any vacancy, he shall mention in such writ how many days, to be not less than ten, within which the Sheriff shall give notice thereof.

"Likewise, in Section 12110 Rev. Stat. 1939, it is provided in elections in cities the size of Kansas City, that it shall be the duty of the Board of Election Commissioners, to give ten days' notice in two daily newspapers of the time and the place of the election, etc.

"We would like to get from you an opinion as to whether or not the Sheriff under the Writ heretofore mentioned, shall issue his proclamation with respect to this election of delegates to a constitutional convention. This provision of the Constitution has been acted on once before, about twenty years ago,

but we do not know whether the Sheriff issued his proclamation, or whether it was done by the Boards of Election Commissioners, of this city.

"We would greatly appreciate an opinion from you on this matter in behalf of the Sheriff."

The Writ of Election issued by the Governor to the Sheriffs of the several counties, omitting non-essential elements, provides as follows:

"I, Forrest C. Donnell, Governor of the State of Missouri, do issue this writ of election and do hereby order that the election of delegates to the convention to revise and amend the Constitution be held on Tuesday, April 6, 1943, and that you issue your proclamation or notice for holding the election accordingly, giving ten days' notice thereof; and that you certify to me the execution of this writ, and how you executed the same."

This writ of election is required by Section 3, of Article XV, of the Constitution of Missouri, which in part reads as follows:

"* * *, 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. * * *"

Along this line we would also like to cite you Section 4, of Article XV, of the Constitution of the State of Missouri, which provides as follows:

"The question 'shall there be a convention to revise and amend the Constitution?' shall be submitted to the electors of the state at a special election to be held on

the first Tuesday in August, one thousand nine hundred and twenty-One, and at each general election next ensuing the lapse of twenty successive years since the last previous submission thereof, and in case 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, and the assembling of such convention, as is provided in the preceding section."

It will be seen from these two provisions of the Constitution that the writ in question is specifically addressed to the sheriff and calls for him to issue his proclamation in a certain manner. The writ further specifies that the sheriff shall certify to the Governor that the writ has been executed and the manner in which this was done. It is our opinion that where a condition such as this exists, that it is the duty of the sheriff, and his alone, to make the proclamation as provided.

The proclamation is merely a notice to the public generally that an election is to be held on a day certain for the purpose of selecting delegates to a constitutional convention. This is clearly not the statutory duty of the Election Commissioners in Kansas City, for, if such were true, it would be in violation of the Constitution of this State.

Section 3, of Article XV, of the Constitution of Missouri, further provides that after the proclamation by the sheriff that the nominations for delegates shall be made in a certain manner and that after such nominees are selected, certificates of elections shall be filed with the Secretary of State not less than thirty days before the election.

Supplementing Section 3, of Article XV, of the Constitution of Missouri, is Section 11683, R. S. Mo. 1939. This section provides as follows:

"Whenever an election shall be called to elect delegates to a constitutional

convention or an election called for the purpose of ratifying a submitted new Constitution, said election shall be conducted in the manner provided by law for general elections and said propositions shall be submitted, voted on, the returns certified and the results proclaimed in the manner provided by law in case such propositions were submitted at a general election; except, that said election shall be conducted by two judges and two clerks at each polling place, one judge and one clerk to be selected from each of the two parties which cast the highest and the next highest number of votes for governor at the last general election: Provided, however, that in all cities and counties of this state where registration of voters is now or may be provided for by law, elections under the provisions of this section shall be held in accordance with the provisions of law now in effect, applicable to the holding of elections in said cities and counties, and the county committee of each political party which at the general election for governor held next preceding any special election to elect delegates to a constitutional convention or for ratification of a new Constitution, cast at least ten per cent of all the votes cast at such election for governor in such city and county, shall appoint three judges and one clerk outside of such city for election under the provisions of this section, and in all such cities the judges and clerks of elections regularly appointed or that may be hereafter appointed and commissioned for regular state and county elections shall act as judges and clerks of all special elections under the provisions of this section. All acts or parts of acts inconsistent with the provisions of this act are hereby declared inapplicable to elections called for the purpose herein provided for."

As will be seen from reading this statute, the election shall be conducted in the same manner as is provided for general elections. Of course, this statute cannot conflict with the Constitution, but can be used only to supplement it.

Consequently, we will next cite you again to a portion of Section 3, of Article XV, of the Constitution of Missouri, in which the duties of the Secretary of State are set out. This reads as follows:

"* * * Not less than fifteen days before the election, the secretary of state shall certify to the county clerk of the county the name of each person nominated for the office of delegate from the senatorial district in which the county, or any part of it, is included, and the names of all persons nominated for delegates-at-large. * * *"

The above section sets out the duties of the secretary of state, and Section 11542, R. S. Mo. 1939, sets out the duties of the clerk of the county court, which said latter section prescribes the following:

"At least seven days before an election to fill any public office, the clerk of the county court of each county shall cause to be published in two newspapers representing each of the two major political parties, if such there be, and if not, then in two newspapers, or if there be only one newspaper published within the county then in such newspaper, the nominations to office certified to him by the secretary of state, and also those filed in his office. He shall make two such publications in each of such newspapers before the election, one of which publications in each newspaper shall be upon the last day upon which such newspaper is issued before the election: Provided, that no higher rates shall be paid per inch, than is provided by section 14966, chapter 119, R. S. 1939, as amended."

Now, as to the duties of the Election Commissioners in Kansas City, we will call your attention to Section 12097, R. S. Mo. 1939, which in part is as follows:

"* * * Upon the appointment of such commissioners, the county clerk of the county in which such city is situated, and the board of election commissioners or other custodians of said property shall, upon demand, turn over to such board of election 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. Said board of election commissioners 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, general, special, local, municipal, state, county, all primaries, and of all other of every description, to be held in such city or any part thereof, at any time. The board, in addition to the other powers expressed in this article, shall have full power and authority to direct judges and clerks as to their duties in relation to election and the laws relating thereto and to compel compliance therewith; and two of the commissioners of opposite political parties shall have the power on any day of election, to remove any judge or clerk, who, in their opinion, is failing to perform his duty; * * * * *"

This statute clearly gives the Board of Election Commissioners full control over all elections in Kansas City, except as may be provided by the Constitution. Therefore, in certifying the names of the nominees for delegates to the

Convention, the Secretary of State should certify them to the Board of Election Commissioners of Kansas City and to the Board of Election Commissioners of Jackson County, instead of the County Clerk of Jackson County.

Section 12110, R. S. Mo. 1939, provides for the notice to be given by the Board, and is as follows:

"It shall be the duty of such board to give ten days' notice in two daily newspapers of such city, of opposite politics if possible, of the time and place of election in each precinct of the city, of the date of the close of registration and of the times and places of registration outside of the main office. The board is also authorized to prepare and, in its discretion, post notices of the times and places of registration outside of the main office."

Following this statute, when the Board receives the certificate of the Secretary of State, it shall then follow this section and give the notice as prescribed.

In the case of vacancies occurring in the General Assembly of this State, Section 14, of Article IV, of the Constitution of Missouri, provides:

"Writs of election to fill such vacancies as may occur in either house of the General Assembly shall be issued by the Governor."

It will be noted that in this instance, the Constitution merely provides that the writs of election shall be issued by the Governor, not specifying to whom they shall be issued. There would be a different procedure followed in that case, but in our instant question the Constitution specifically states that the writ of election shall be issued to the sheriffs of the counties.

II.

Under the instructions as given in the Writ of Election, the sheriff is to give "ten days' notice." The question arises as to whether this means ten days before the election or ten consecutive days.

Referring again to Section 3, of Article XV, of the Constitution, we see that the certification of nomination must be in the hands of the secretary of state at least thirty days prior to the day of the election. This being the case, the term "ten days' notice" could not possibly be ten days before the election, since, if the sheriff waited until that time, there would not be sufficient time remaining to certify the names of the nominees to the secretary of state.

Under Section 12861, R. S. Mo. 1939, which deals with vacancies in the General Assembly and writs of election to call elections to fill such vacancies, we find the following:

"The sheriff to whom any writ of election shall be delivered shall cause the election to supply such vacancy to be held within the limits composing the county or district at the time of the next preceding general election, and shall issue his proclamation or notice for holding the election accordingly, and transmit a copy thereof, together with a copy of the writ, to the sheriff of each of the counties within which any part of such old county or district may lie, who shall cause copies of such notice to be put up, and the election to be held accordingly, in such parts of their respective counties as composed a part of the old county or district for which the election is to be held, at the last preceding general election; and the returns shall be made and the certificate of election granted in all things as if no division had taken place."

As can be seen from this statute, in a situation somewhat similar to the instant one, the sheriff shall "cause copies of such notice to be put up." This statute of course has reference to a special election, and in view of the fact that the writs in this kind of matter and also the writs of election are directed to the sheriff, calling for a proclamation, we believe that the proclamation in our instant case should be posted for at least a ten-day period.

However, it is common knowledge that more people would see a proclamation of this type in a newspaper publication than would see the proclamation posted by the sheriff in public places. Especially is this true in the areas where there is a dense population. Therefore, it would possibly be the best practice to post copies of such proclamation as directed by Section 12861, R. S. Mo. 1939, and also publish such proclamation in the newspapers.

III.

The next question to be considered is the proper form for the sheriff's certificate to the Governor, as required under the Writ of Election. There is no statutory form provided, but we suggest it be made in the following manner:

Certificate

This is to certify that I have this ___ day of _____, 1943, executed the Writ of Election directed to me by Honorable Forrest C. Donnell, Governor of the State of Missouri, by issuing my proclamation or notice for holding an election for the selection of delegates to a Constitutional Convention, said election to be held on April 6, 1943, by posting copies of such proclamation or notice of election in _____ County in the following public places _____

_____ for 10 days, and by publication of such proclamation in _____ and _____, newspapers published in said County of _____, State of Missouri.

Given under my hand this ____ day of
_____, 1943.

Sheriff of _____ County.

IV.

Another question to be considered is as to who shall select the judges and clerks of election and how they are to be notified.

Section 11683, R. S. Mo. 1939, in speaking of this matter, prescribes as follows:

"Whenever an election shall be called to elect delegates to a constitutional convention or an election called for the purpose of ratifying a submitted new Constitution, said election shall be conducted in the manner provided by law for general elections and said propositions shall be submitted, voted on, the returns certified and the results proclaimed in the manner provided by law in case such propositions were submitted at a general election; except, that said election shall be conducted by two judges and two clerks at each polling place, one judge and one clerk to be selected from each of the two parties which cast the highest and the next highest number of votes for governor at the last general election; Provided, however, that in all cities and counties of this state where registration of voters is now or may be provided for by law, elections under the provisions of this section shall be held in accordance with the provisions of law now in effect, applicable to the holding of elections in said cities and counties, and the county committee of each political party which at the general election for

governor held next preceding any special election to elect delegates to a constitutional convention or for ratification of a new Constitution, cast at least ten per cent of all the votes cast at such election for governor in such city and county, shall appoint three judges and one clerk outside of such city for election under the provisions of this section, and in all such cities the judges and clerks of elections regularly appointed or that may be hereafter appointed and commissioned for regular state and county elections shall act as judges and clerks of all special elections under the provisions of this section. All acts or parts of acts inconsistent with the provisions of this act are hereby declared inapplicable to elections called for the purpose herein provided for."

This section provides that when an election is called to elect delegates to a constitutional convention, that said election shall be conducted in the manner provided by law for general elections. In view of the fact that there are no other special provisions pertaining to this matter, this statute will govern. It will be seen that said election shall be conducted by "two judges and two clerks at each polling place." There is also a provision as to the selection in cities and counties where registration of voters is in force.

Following the foregoing statute, the county courts of each county shall select the proper number of judges, except in those cities and counties where the registration law is in effect. In such cases the judges and clerks are selected by the political parties which at the preceding general election cast ten per cent of the votes cast at such election for Governor. However, in cities and counties where there is a Board of Election Commissioners, such Board discharges the duties of the selection of judges and clerks.

The judges and clerks of election are then notified of their appointment in the same manner as if it was a general election.

Since Section 11683, supra, provides that the election is to be conducted in the same manner as provided by law for general elections, the ballots for such elections shall be furnished by the respective clerks of the county courts. Sections 11593 and 11594, R. S. Mo. 1939, provide as follows:

(11593)

"All ballots cast in elections for public officers within this state shall be printed and distributed at public expense, as hereinafter provided. The printing of the ballots and of the cards of instruction for the electors in each county, and the delivery of the same to the election officers, as provided in section 11598, shall be a county charge, except where the officers to be voted for are exclusively city officers, in which case such printing and delivery shall be a city charge, the payment of which shall be provided for in the same manner as the payment of other county or city expenses."

(11594)

"Except as in this article otherwise provided, it shall be the duty of the clerk of the county court of each county to provide printed ballots for every election for public officers in which the electors or any of the electors within his county participate, and to cause to be printed in the appropriate ballot the name of every candidate whose name has been certified to or filed with him in the manner provided for in this article. Ballots other than those printed by the respective clerks of the county courts according to the provisions of this article shall not be cast or counted in any election."

The election shall be conducted relative to reports to county courts, supplies, ballots and returns, in the same manner as general elections. This would also apply as to the time of opening and closing the polls.

V.

A suggested form to be used by the sheriffs of the various counties, for the "Proclamation of Election," is as follows:

PROCLAMATION OF ELECTION

Under the authority of the writ of Election directed to me by Honorable Forrest C. Donnell, Governor of the State of Missouri, I hereby proclaim that on April 6, 1943, there shall be an election held in _____ County, for the purpose of electing delegates to the Constitutional Convention, said Constitutional Convention to be convened by proclamation by the Governor of the State of Missouri on a date within six months after the election of such delegates, at the seat of government of the State of Missouri.

Given under my hand this ____ day of _____, 1943.

Sheriff of _____ County,
Missouri.

VI.

Another consideration is whether the election judges and clerks can be used for both the school election and the election for delegates to the Constitutional Convention.

The conduct of the election of delegates for the Constitutional Convention is conducted in the same manner as

that of general elections, as provided by Section 11683, R. S. Mo., 1939. There is one exception to this and that is the number of judges to be used in such elections. This matter is treated supra.

In the case of the annual school elections and the election of the county superintendent of schools, such elections are not conducted in the manner of general elections. There is no provision for judges in the annual school election in the rural communities. Further, in the case of the county superintendent of schools, there is no provision as to the proper party to pay for the ballots. Also, the persons in attendance at the annual school elections vote for the county superintendent of schools if he happens to be up for election at that time. In the cities, in such elections, there are judges used in some instances. However, a study of the procedure and conduct of the annual school meeting and election of the county superintendent of schools, shows that such elections are held in a rather informal manner. We do not feel that the election of delegates to the Constitutional Convention should be held in an informal manner in the light of the constitutional provisions and statutes pertaining thereto, and that such election should be held separate and apart from the other elections. The county pays the expenses of the Constitutional Convention election and the expenses of the other elections should be paid as they have formerly been, and the procedure and conduct should be the same as formerly but separate and apart from the Constitutional Convention election.

VII.

The further question has been asked as to whether it is necessary for the voters voting for delegates to the Constitutional Convention to be registered in view of the fact that it is not necessary that they be registered to vote in a school election or for county superintendent of schools. This inquiry was made, setting out the City of Hannibal as being the city to which this question referred.

This question can be answered by a reading of Section 11683, R. S. Mo. 1939, which provides in part as follows:

"* * * Provided, however, that in all cities and counties of this state where registration of voters is now or may be provided for by law, elections under the provisions of this section shall be held in accordance with the provisions of law now in effect, * * *"

As can be noted from reading the above provision, in the case of an election for delegates to the Constitutional Convention, the voters voting for such delegates must be registered in the city and counties where the registration law is in effect.

VIII.

Further inquiry has been made as to whether it is necessary that the gummed sticker be used in connection with the election of delegates to the Constitution Convention and in the election of county superintendent of schools.

As stated above the election of the delegates to the Constitutional Convention is conducted in the manner provided by law for a general election as specified in Section 11683, R. S. Mo. 1939. The statute relative to the gummed sticker being placed over the ballot number, will be found in Laws of Missouri, 1941, at page 363, Section 11607. This section provides as follows:

"Every ballot shall be numbered in numerical order in which received, and it shall be the duty of the election judges, in the presence of the voter, before any ballot is placed in the ballot box, to cover or conceal securely the identifying number or numbers placed on the ballot by placing over the number or numbers, and pasting down, a black sticker, which sticker is to be two inches square with gummed edges extending three-eighths (3/8) of an inch towards the center of the square, so as to conceal but not destroy,

the number or numbers placed thereon. Such stickers shall be supplied to the election judges by the County Clerk or Board of Election Commissioners of each county or city, and no sticker shall be removed except in case of contested elections, grand jury investigations, or in the trial of all civil or criminal cases in which the violations of any law relating to elections, including primary elections, is under investigation or at issue and then only on the order of a proper court or judge thereof in vacation. No judge of election shall deposit any ballot upon which the names or initials of the judges, as hereinbefore provided for, do not appear."

In view of the provisions of Section 11683, R. S. Mo. 1939, and Section 11607 of the Laws of Missouri for 1941, it is our opinion that the gummed sticker shall be used in connection with the election of delegates to the Constitutional Convention.

In answer to the question of whether the Australian ballot, which is used in general elections, or the ribbon ballot, which is used in primary elections, shall be used in the election of the delegates to the Constitutional Convention, we will again call your attention to Section 11683, which has been cited several times in this opinion, and which provides that the election to elect delegates to a Constitutional Convention, shall be conducted in the manner provided by law for general elections. Therefore, it would appear that the regular ballot used at general elections shall be used.

Conclusion.

Therefore, it is the opinion of this Department that:

(1) The writs of election issued by the Governor of the State of Missouri to the sheriffs of the various counties in this State, shall be executed by the said sheriffs of the various counties, including Jackson County, who shall issue proclamations or notices of election as called for in such writs of election.

(2) A proclamation or notice of election to be issued by the sheriff shall be posted in public places in the respective counties and by publication if such be desired.

(3) The judges and clerks who shall conduct the election for the purpose of the selection of delegates to the Constitutional Convention, shall be selected in the same manner as for general elections, except that the number shall be less as provided by Section 11683, R. S. Mo. 1939.

(4) The furnishing of supplies and all other matters pertaining to the election where such delegates shall be selected, shall be handled and conducted in the same manner as for general elections.

(5) The election to select delegates to the Constitutional Convention shall have judges and clerks appointed for that purpose alone and the conduct of such election shall be separate and apart from the conduct of an election for the election of a county superintendent of schools and other annual school elections.

(6) It is necessary in counties and cities where the registration of voters is in effect, that all persons attempting to vote at the election called for the purpose of selecting delegates to the Constitutional Convention shall be registered.

(7) The gummed stickers to be placed over the ballot numbers, as provided by Section 11607, Laws of Missouri, 1941, at page 363, shall be used on Constitutional Convention ballots,

but such provision does not apply to school elections and it is not necessary that the gummed stickers be used on ballots used in the election of a county school superintendent or for any other school election.

(8) The form of the ballots to be used in the election for the selection of delegates to the Constitutional Convention shall be in the same form as provided by the general election laws of the State of Missouri.

Respectfully submitted,

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Assistant Attorney-General

APPROVED:

ROY MCKITTRICK
Attorney-General

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