

(SUPPLEMENTAL OPINION)

ELECTIONS: Same polling place may be used for both Constitutional Convention delegates election and municipal election.

March 3, 1943.

Hon. Robert V. Niedner
Prosecuting Attorney
St. Charles County
St. Charles, Missouri



Dear Mr. Niedner:

The Attorney-General wishes to acknowledge receipt of your letter of February 26th in which you request an opinion relative to some questions regarding the election to be held to select delegates to the Constitutional Convention. There seem to be two questions which you wish answered: first, as to whether the judges and clerks who are selected to serve in the Constitutional Convention election, can also serve as judges in a municipal election; and, second, whether it is necessary that there be separate polling places for the Constitutional Convention election and for the municipal election.

In answer to your first question, we will say that this Department has furnished an opinion which holds that the judges and clerks to be used in the selection of delegates for the Constitutional Convention shall be separate from the judges and clerks which serve in any municipal election which is to be held on the same day. We base our opinion on the fact that the election of the delegates to the Constitutional Convention is not a function in any way of any municipal government, and neither is the selection of municipal officers in the different cities connected in any way with the procedure of selecting delegates to the Constitutional Convention. They are matters wholly divorced from each other and it is a mere coincidence that these two elections happened to be called for the same day.

We further base our opinion in this matter on the provisions of Section 11683, R. S. Mo., 1939, which 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."

It will be seen from reading this statute that there are a different number of judges and clerks to be used in an election of this kind than there is under any other election to be called under the general election laws of the State of Missouri, and it is the opinion of this Department that the judges and clerks to be used in the election called for the purpose of selecting delegates to the Constitutional Convention shall be used only for the purposes of that election.

In answer to your second question, we have searched the statutes and we do not find any provisions stating that the polling places for the Constitutional Convention delegate election shall be separate and apart from the polling places of any municipal election to be held on the same day. As will be noted from the section of the statute cited above, in cities and counties where the registration law is in force and effect, this election shall be conducted under such registration law. In view of the fact that you are operating under the provisions of such registration statutes, it will be necessary, of course, in the coming election for the selection of delegates, that you proceed under such statutes. It is apparent that under the circumstances, to-wit, that you have only one set of registration books, that if the polling places for the municipal election and the election for delegates are to be separate that it would be almost impossible to use the one set of registration books which you have. However, we see no reason why polling places for the municipal election and the election for the selection of delegates should not be held in the same place as long as the judges and clerks for the two elections are not the same.

Therefore, it is the opinion of this Department that the same polling places may be used in the municipal elections and the election for the selection of delegates to the Constitutional Convention.

Respectfully submitted,

JOHN S. PHILLIPS
Assistant Attorney-General

APPROVED:

ROY MCKITTERICK
Attorney-General