

(SUPPLEMENTAL OPINION)

ELECTIONS: Election clerks in the Constitutional Convention delegate election selected by the judges of such election.

March 11, 1943.

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Hon. Thomas G. Woolsey
Prosecuting Attorney
Cooper County
Boonville, Missouri

Dear Mr. Woolsey:

This will acknowledge receipt of your letter of March 9, 1943, in which you request an opinion of this Department. This opinion request, omitting caption and signature, is as follows:

"As per my agreement by phone this morning I respectfully request an interpretation of section 11504 R. S. Mo. 1939, for this reason:

"If the election judges, one Democrat and one Republican are authorized to name and select the clerks to officiate at the impending Constitutional Election, I believe that it will invite no end of dissatisfaction; whereas if the County Court can be permitted to name the clerks the selections may be had with infinitely less trouble or dissatisfaction.

"Please give me the benefit of your interpretation of this Section at your earliest convenience."

In order for us to arrive at a conclusion on the matter as to who is to select the clerks for the impending Constitutional Convention election, we will first cite you to Section 11685, R. S. Mo. 1939, which reads in part 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; * * * * *

On reading this section of the statute it will be observed that the Constitutional Convention delegate election "shall be conducted in the manner provided by law for general elections." Under such a provision it is necessary for us to inspect the statutes relating to the conduct of general elections in the State of Missouri. Therefore, we wish to call your attention to Section 11504, R. S. Mo. 1939, which provides as follows:

"In all precincts casting less than two hundred votes in the last general election, the judges shall appoint two clerks, and in all precincts casting two hundred or more votes in the last preceding general election, the judges shall appoint four clerks. The clerks, before entering on the duties of their appointment, shall take an oath or affirmation, to be administered by one of the persons appointed or elected judges of the election, that they will faithfully record the names of all the voters; said clerks shall also take the oath above prescribed for judges to be

administered at the same time and
in the same manner heretofore directed."

This section clearly indicates that in all precincts casting less than two hundred votes, the judges shall appoint two clerks, and in all precincts casting two hundred or more votes, the judges shall appoint four clerks. Section 11503, R. S. Mo. 1939, is entitled "Oath of Judges of Election," and such section sets out the oath that the judges of election shall take before entering upon their duties. Section 11504, supra, immediately follows this section and there can be no doubt that when the word "judges" is used in such section that it refers to the "judges of election." This could not refer to the judges of the county court.

We have examined all statutes which might pertain to this matter and we find no statute which deals with the selection of clerks of the election aforesaid except the statutes cited above. Therefore, it is the opinion of this Department that the clerks of the election for the selection of delegates to the Constitutional Convention shall be appointed by the judges of their respective precincts as provided by Sections 11683 and 11504, R. S. Mo. 1939.

Respectfully submitted,

JOHN S. PHILLIPS
Assistant Attorney-General

APPROVED:

ROY MCKITTRICK
Attorney-General

JSP:EG