REPRESENTATIVE DISTRICTS: St. Louis Election Commissioners cannot
ELECTION COMMISSIONERS: alter representative districts until after next census.

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Mr. Arthur M. Sullivan
Board of Election Commissioners
208 South Twelfth Boulevard
St. Louis, Missouri

Dear Mr. Sullivan:

This is in reply to your letter of recent date requesting an opinion from this department for the Board of Election Commissioners of the City of St. Louis. Your letter reads as follows:

> "The wards of the City of St. Louis were redistricted in 1943. In Wards 12 and 23, adjacent wards, the dividing line extends westwardly to the end of Michelberger Street, from which point west to the City limits an undeveloped territory existed. As no streets had been laid out at that time, a line was drawn through the middle of this territory, about the length of three blocks.
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> "During the past year a new subdivision has been opened and this dividing line now extends through the center of eight lots, thus presenting a problem as to the ward in which these voters reside.
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> "At present this Board has a bill before the Board of Aldermen of the City of St. Louis, changing these lines. These changes will affect the boundaries of the 3rd and 4th Representative Districts, and the Board would like to alter these District lines to conform with the new ward lines. The changes are minor and affect only about nine voters. We should like to know whether we have the authority to alter these Representative District Lines. May we call your attention to

> Article III, Section 10, of the Constitution of the State of Missouri, and Section 12896 of the Session Acts of 1945."

The question presented concerns the authority of the Board of Election Commissioners to alter representative district boundary lines in the City of St. Louis. The applicable sections of the 1945 Constitution provide:

> Sec. 3, Art. III. "When any county is entitled to more than one representative, the county court, and in the City of St. Louis the body authorized to establish election precincts, shall divide the county into districts of contiguous territory, as compact and nearly equal in population as may be, in each of which one representative shall be elected."

> Sec. 10, Art. III. "The last decennial census of the United States shall be used in apportioning representatives and determining the population of senatorial and representative districts. Such districts may be altered from time to time as public convenience may require."

The body authorized to establish election precincts in the City of St. Louis is, of course, the Board of Election Commissioners, and, hence, is authorized to alter representative district boundary lines just as such authority is given the county courts in the various counties of the state. However, Section 10 of Article III is not an unlimited grant of power to said Board. The power to alter such lines is legislative in character and cannot be exercised at the will of said Board. This was recognized by the Supreme Court, en banc, in State ex rel. v. Patterson, 229 Mo. 364, where it was said at page 391:

> "* * * This power is legislative in character, and when such powers are conferred upon other bodies, in instances where they can be conferred, the presumption is that the power does not extend beyond the express terms of the grant. County courts are denied any rights except those expressly conferred. (Constitution, sec. 36, art. 6.)

> This section 9 of article 4 is merely directory in terms, and in our judgment reserves to the Legislature the right to provide for the alteration of legislative districts once established as per the terms of the Constitution. In other words the Constitution contemplates that those districts shall be established at decennial periods, but has reserved a power in the Legislature to provide by law for a change in the same. This, upon the theory that there is a difference between dividing a county into districts, and afterward changing the boundary lines of those districts. That this power is reserved to the Legislature is further emphasized by the fact that section 9 does not, within itself, undertake to prescribe the conditions under which the changes or alterations should be made. Nor does it undertake to prescribe the method of determining the requisites for such changes. These things were evidently left for legislative determination, and the Legislature has not acted. This section 9 only speaks of changes when 'public convenience may require.' It places no restrictions as to compact and contiguous territory. It contains no safeguards whatever. Upon its face it is not self-executing, but clearly indicates that there was to be legislative action. * * *"
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> (The applicable provisions of the 1945 Constitution are substantially the same as those under consideration in this case.)

We find judicial construction in the Patterson case, supra, of the phrase "from time to time as public convenience may require." The following statement was made at pages 381 and 382:

> "Respondents Patterson and Harnden rely upon section 9 of article 4 of the Constitution, which thus reads: 'Senatorial and representative districts may be altered, from time to time, as public convenience may require. When any senatorial district shall be composed of two or more counties, they shall be contiguous; such districts

to be as compact as may be, and in the formation of the same no county shall be divided.'

"Under this section it is claimed that the county court can rearrange the legislative districts at any time. Indeed, if full latitude be given to their contention such districts might be remoulded at each session of the county court, a thing unreasonable within itself.

"To start with, this section gives, within itself, no power to the county court. The county court is not mentioned and if it was intended to give it power, such fact must be gathered from the context of the article and not from the section itself. Going to the section itself, it mentions both senatorial and representative districts. That the county courts have no power as to senatorial districts must be conceded. That the power here conferred as to senatorial districts had reference to a legislative power reserved by the Constitution to that branch of the government, can not well be disputed. For as to most of the senatorial districts the Legislature has the right to fix the boundaries. If then it appears that the Constitution was reserving to the Legislature the right to legislate as to senatorial districts, is it not reasonable to construe that such was the intent as to representative districts. Both are mentioned together. One clearly refers to a reservation of power in the Legislature, why not the other? But the section says that such districts may be altered 'from time to time.' How must this be read? That senatorial districts cannot be rearranged oftener than once in ten years is more than evident from the Constitution. That is not denied here. Why say that representative districts are to be changed oftener? Both are mentioned in the same connection. One concedely cannot be changed oftener than once in ten years. That being the situation, what does the expression 'from time to time' mean? Does it mean that a county court can upon its own whim, at each and every session,

> change the representative districts, or does it mean that after each apportionment of representatives to the county, such court shall rearrange the districts? This apportionment is by decennial periods. The changes in senatorial districts are by decennial periods. When the Constitution coupled the two together and used the words 'from time to time,' did it not refer to decennial periods? Did it not refer to the things which could be done at decennial periods and not otherwise? And, further, when it coupled the two together, and reserved the power to alter and change, was it not a reservation to the Legislature and not to the county court? We think that such was the idea of the Constitution-framers. * * *"

Thus, Section 10 of Article III does not authorize frequent alteration of said boundary lines as a casual reading might indicate. The Court, in the Patterson case, supra, said at pages 394 and 395:

> "From these sources came section 9 of article 4 of the constitution of 1875, supra. In its origin therefore it clearly referred to the Legislature and not to any other body.
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> "So when we take the context of the present article 4, and the origin of section 9 therein, it appears to us clear that there is a reservation of power to the Legislature, and until the Legislature acts with reference to the alteration of the districts established under section 3, there can be no action by the courts. The Legislature perhaps can act by laws duly passed, and in so doing can delegate its constitutional powers over the subject-matter but up to this time it has not been done. Until such time as the Legislature may legally provide for the alteration of the legislative districts, there is no such power in the county courts."

Therefore, the Board of Election Commissioners of the City of St. Louis can alter representative district boundary lines

only at specific times as may be designated by the Legislature. By reenacting Section 12896, Laws of 1945, page 1123, the Legislature authorized the Board of Election Commissioners of the City of St. Louis to alter the boundary lines of any representative district within their jurisdiction at certain specified times. It is provided that such districts may be altered one time after each national decennial census as public convenience may require. Said section provides as follows:

> "Within ten days after the effective date of this Act, and thereafter within thirty days after the taking of each decennial census of the United States, the Secretary of State shall forthwith certify to the county courts of the several counties, named in Section 12895, Revised Statutes of Missouri, 1939, which are entitled by this apportionment to two or more representatives, and to the Board of Election Commissioners in the City of St. Louis, the number of representatives to be elected in the respective counties and in the City of St. Louis. Within twenty days after the effective date of this Act and thereafter within sixty days after being officially so informed by the Secretary of State, the county court of the several counties and the Board of Election Commissioners of St. Louis shall divide their respective counties and said city into representative districts, of compact and contiguous territory corresponding in number to the representatives to which such county or city is entitled, and in population as nearly equal as may be, in each one of which the qualified voters shall elect one representative, who shall be a resident of such district. After each decennial census such districts may be altered one time as public convenience requires. On its own motion, or on petition of five hundred or more qualified voters of the county or of said city, the county court of such counties or the Board of Election Commissioners in the City of St. Louis, shall hold a public hearing to determine the necessity for altering any such districts. The population of the county or of said city shall be divided by the number of

> representative districts in the county or said city, and proof at such hearing that by the last decennial census of the United States taken since the last districting was made the population of any one district varies from the quotient by more than one-fourth thereof, shall be prima facie evidence that public convenience requires that such a redistricting be made. If the county courts or Board of Election Commissioners of said city shall find that public convenience requires such redistricting to be made, they shall by an order entered of record, redistrict such county or city into representative districts in the manner prescribed by the Constitution for such districts. Within thirty days after the effective date of this Act, and thereafter within thirty days after making any districting, the county court or Board of Election Commissioners in said city shall file the divisions or alteration and the names and descriptions of the districts with the county clerk of said counties or the circuit clerk in said city, and certify the same to the Secretary of State."

We assume that after the effective date of the above section the City of St. Louis was divided by the Board of Election Commissioners into representative districts. The question which now arises is whether said districts can be altered at the present time. It will be noted that "after each decennial census such districts may be altered from time to time as public convenience may require." In order to determine the meaning of the provision, we must refer back to the first part of the statute wherein it is provided that within ten days after the effective date of this act, "and thereafter within thirty days after the taking of each decennial census of the United States," the Secretary of State shall certify to the Board of Election Commissioners the number of representatives to be elected, and "within twenty days after the effective date of this Act and thereafter within sixty days after being officially so informed by the Secretary of State, * * * the Board of Election Commissioners of St. Louis shall divide their * * * city into representative districts." It is a well-recognized rule of statutory construction that the provisions of an act must be construed in harmony with each other so as to give force and effect to each. This necessarily requires that in determining the meaning of particular sections of legislative acts all other parts thereof

should be considered. State v. Padberg, 145 S.W. (2d) 150, l.c. 151, 152, and State v. Mitchell, 181 S.W. (2d) 496, l.c. 500.

Taking Section 12896, supra, as a whole, we believe that the Legislature intended to refer only to each decennial census which may be taken after the effective date of said section. In other words, that said representative districts can be altered only after the next national decennial census has been taken and then only when public convenience requires such action. Reference is not made to the 1940 national census, but only to those made after the effective date of Section 12896. The terms of said statute are clear and unambiguous and must be given effect as written.

Conclusion.

In view of the foregoing, it is our opinion that the Board of Election Commissioners of the City of St. Louis is not authorized to alter the boundary lines of representative districts in the City of St. Louis until a time after the next national decennial census is taken.

Respectfully submitted,

DAVID DONNELLY
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

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