

ELECTIONS) Kansas City Board of Election Commissioners not required
) to have clerks canvass for special election for referendum
) on gasoline tax increase.

January 18, 1950

1/26/50

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Honorable Ray A. Edlund
Chairman, Bd. of Election Commissioners
County Court House
Kansas City 6, Missouri

Dear Sir:

This is in answer to your letter of recent date requesting an official opinion of this department reading as follows:

"Do we have to have, by law, a Clerk's Canvass in connection with this election? We would rather not have one, as the additional cost would be \$20,000."

Section 53 of Article III of the Constitution of Missouri provides as follows:

"The total vote for governor at the general election last preceding the filing of any initiative or referendum petition shall be used to determine the number of legal voters necessary to sign the petition. In submitting the same to the people the secretary of state and all other officers shall be governed by general laws."

In the case of State ex rel. v. Westhues, 9 S.W. (2d) 612, the Supreme Court in deciding the question of whether or not under a provision of the Constitution of 1875, reading as follows:

"Petitions and orders for the initiative and for the referendum shall be filed with the secretary of state, and in submitting the same to the people he, and all other officers, shall be guided by the general laws and the act submitting this amendment, until legislation shall be especially provided therefor."

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referred laws had to be published in newspapers before the election at which such laws were to be voted upon said at l. c. 618:

"As general laws, in force when section 57, art. 4, was adopted, provided for publication of proposals to amend the Constitution in a newspaper in each county, such requirement by express reference became applicable to the submission of initiative and referendum measures, and they too were required to be published in a newspaper in each county, and such requirement is still in force and effect."

From the holding in this case it is clear that the question of whether or not a canvass is required depends on whether the general laws so require. Section 12121, R. S. Missouri, 1939, provides as follows:

"Immediately after the close of registration before each election preceding which a canvass is required, the board shall have verification lists prepared for each precinct. Such list shall have the names and addresses of all voters registered in the precinct arranged in the same order as the precinct registers. A canvass shall be made before each general state and county election, each state and county primary, each general city election, and each election at which any proposal by the city or the county for increase of indebtedness is to be submitted unless held with a general county or state election."

It will be noted that there is no requirement in this section that a canvass be held before a special referendum election. Sections 12097 (a), Laws of Missouri, 1943, page 542, provides as follows:

"The Board of Election Commissioners, in addition to all other powers conferred upon it by this Article, shall have the power and authority, in its discretion, in any special constitutional election for the election of delegates to a constitutional convention, or any election called for the purpose of submitting the issue of adoption of a Constitutional Amendment or Amendments, to consolidate two or more precincts, and

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to use one set of judges and clerks in such consolidated voting area and to dispense with a clerks' canvass and the printing of registration lists for such special election, and the Board of Election Commissioners shall have the power and authority to substitute the last printed registration list, corrected to the final date of registration and transfer for such special election, for the registers at any polling place, providing that following any such election in which such registration lists are so substituted, the Board of Election Commissioners shall cause the voting record of all persons voting in such election to be entered upon the registration affidavits of all such persons."

Since Section 12097 (a), supra, is the general law relating to submission of constitutional amendments for a special election, we believe such section to be applicable to a special referendum election.

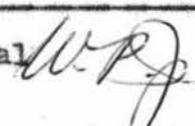
CONCLUSION

It is the opinion of this department that the board of election commissioners is not required to order a canvass before the special referendum election to be held April 4, 1950.

Respectfully submitted,

C. B. BURNS, JR.
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General 

CBB/feh