

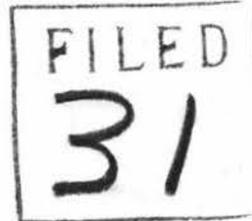
ELECTIONS:

Under provisions of Section 11682 judges selected by county court, clerks selected by judges.

March 7, 1950

FILED 31

Mr. Ronald J. Fuller
Prosecuting Attorney
Phelps County
Rolla, Missouri



Dear Sir:

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

"I would appreciate receiving an opinion from the Attorney General's Department on a question which is pertinent to the special election on the gasoline tax referendum which will be submitted to the voters of this State on April 4, 1950.

"Statement of Facts: Section 11682, Revised Statutes of Missouri, 1939, pertaining to Special Elections, provides that the Special Election shall be conducted in the manner provided by law for General Elections, but also provides, '...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 casts the highest and next to the highest number of votes for governor at the last General Election'. In General Elections the County Court selects the judges from the names presented by the committee member of each political party from the township in which the polling place is situated, and the judges so selected in turn select their clerks to assist. In Section 11682, Revised Statutes of Missouri, 1939, there is no provision stating who selects the judges and the clerks, the section merely provides that 'one judge and one clerk to be selected from each of the two parties'.

"Question: Who selects the judges and clerks at each polling place under the provisions of Section 11682, Revised Statutes of Missouri, 1939?"

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Section 11682, R. S. Mo 1939 provides as follows:

"Whenever a proposed amendment to the Constitution or the proposition: 'Shall there be a convention to revise and amend the Constitution?' shall be submitted to the voters at a special election, 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 are submitted at a general election: Provided, that it shall not be necessary to hold said election with booths for the voters and 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 next to the highest number of votes for governor at the last general election; except that in cities and counties where registration of voters is now provided for by law that said special elections shall be held in accordance with the provisions of law now in effect applicable to the holding of elections in said cities and counties: Provided further, that the secretary of state shall provide for the same publication in newspapers and the same posting of notices at voting places of the proposition, 'Shall there be a convention to revise and amend the Constitution?' as is provided by law in the case of proposed constitutional amendments."
(Underscoring ours)

Section 11502, R. S. Mo. 1939 and Section 11504, Laws of Missouri, 1947, Vol. 2, p. 232, constitute the general law of this state for the selection of judges and clerks at elections. Section 11502, R. S. Mo. 1939, provides as follows:

"All judges of elections, appointed under the provisions of this article shall be selected by the county court from a list of persons furnished said court in the form and manner following: The political party that polled the largest number of votes at the last preceding general election and the political party that polled the next largest vote at said

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election shall, each, through its central committee, furnish to said county court at least fifteen days before the election, a list of names of persons qualified by law to serve as judges of election, double the number required for judges of said election, from which said list said county court shall, at least ten days before the election herein provided for, select and appoint the number of judges required to hold said election, taking one-half of the judges so appointed from each of said lists; Provided, that for the purpose of determining the political parties entitled to representation on the election board, the county court shall take the vote cast for governor throughout the entire state for the respective parties: Provided further, that if any political party, through its committee, shall fail to present a list of names as aforesaid, within the time aforesaid, then the said county court may select and appoint the requisite number of judges provided by law for said party."

Section 11504, Laws of Missouri, 1947, Vol. 2, p. 232 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."

It is our view then that the judges, one from the Democrat and one from the Republican party, are to be selected by the county court and the clerks, one from the Democrat and one from the Republican party, are to be selected by the judges.

Section 11515, R. S. Mo. 1939, providing as follows:

"In all counties in this state in which a special election shall be held for the purpose of voting

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upon any proposition to issue bonds for any purpose, which, under the law, must be submitted to the vote of the qualified electors for determination, two judges and two clerks of such election shall be appointed by the county court for each special election precinct: Provided, that the provisions of this law shall not apply when any such proposition is submitted to be voted upon at a regular primary election or a general election."

is not applicable in this case as such section refers only to special elections for the purpose of voting upon any proposition to issue bonds for any purpose and is not a statute providing for general elections referred to in Section 11682.

CONCLUSION

It is the opinion of this department that in any county where the special referendum election of April 4, 1950 is to be conducted under the provisions of Section 11682, R. S. Mo. 1939, that at each polling place there is to be one Republican and one Democratic judge to be selected by the county court and that at each polling place there is to be one Republican and one Democratic clerk to be selected by the aforesaid judges.

Respectfully submitted,

C. B. BURNS, JR.
Assistant Attorney General

APPROVED:

J. E. TAYLOR
ATTORNEY GENERAL