

**ELECTIONS:** Where sheriff dies within nine months preceding  
general election, successor is to be elected at  
**SHERIFF:** such general election, and special election  
cannot be held.

November 21, 1950



Mr. David P. Plummer  
Clerk  
Clinton County  
Plattsburg, Missouri

Dear Sir:

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

"In filling the vacancy existing in the office of the Sheriff of Clinton County, Missouri, caused by the death of former Sheriff, Charles Wamsley, on November 5, 1950, the County Court did by an order of record, dated November 6, 1950, appoint J. C. Walkup Sheriff to fill the vacancy, and ordered a Special Election to be held on December 2, 1950, for the purpose of electing a Sheriff.

"It was called to the attention of the County Court that it was doubtful that they had authority for calling said Special Election; therefore by an order made November 20, 1950, the Court rescinded the order calling the Special Election and ordered me to request your office whether or not they have authority to order a Special Election for the purpose of electing a Sheriff."

Section 13143, Revised Statutes of Missouri, 1939, provides in part as follows:

"Whenever from any cause the office of sheriff becomes vacant, the same shall be filled by the county court; if such vacancy happens more than nine months

prior to the time of holding a general election, such county court shall immediately order a special election to fill the same, and the person by it appointed shall hold said office until the person chosen at such election shall be duly qualified, otherwise the person appointed by such county court shall hold office until the person chosen at such general election shall be duly qualified; \* \* \*

Section 120.55, House Bill No. 2057, 65th General Assembly, provides as follows:

"When a vacancy, occurring in the nominations after the holding of any primary, has resulted from the death or resignation of a nominee of the party who was selected at such primary or when a vacancy in office occurs after the last Tuesday in April and before the general election held in the same year, which vacancy is to be filled for the unexpired term at such general election, the party committee of the county, district or state, as the case may be, shall have authority to make nominations to fill such vacancies. Nominations to fill such vacancies shall be filed, as the case may be, either with the secretary of state not later than fifteen days before the day fixed by law for the election of the persons in nomination or with the board of election commissioners or county clerk not later than ten days before such election. No names shall be allowed on any ticket until the required fee has been paid."

Section 120.56, House Bill No. 2057, 65th General Assembly, provides in part as follows:

"When any vacancy, which may be filled by a candidate nominated by a party committee pursuant to section 120.09 or section 120.55, occurs too late to

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permit the committee to file its nomination within the time prescribed in such sections, the chairman of the party committee of the county, district or state, as the case may be, is hereby empowered to make a nomination to fill such a vacancy. The chairman shall make an affidavit covering all the facts before the judge of some court of record, who shall, under his hand and the seal of the court, grant a certificate covering the facts, which certificate shall be filed with the secretary of state, county clerk or board of election commissioners. If with the secretary of state, the secretary of state shall immediately notify the various county clerks and boards of election commissioners of the vacancy. Whenever the county clerks or boards of election commissioners are duly notified of a vacancy in the manner provided by law, it shall be their duty forthwith to have printed small pasters, suitable for covering the name or names to be stricken out, containing in plain letters the name or names to be substituted. The county clerks or boards of election commissioners shall see to it that these pasters are properly applied to the tickets before they are placed in the hands of the voters, if necessary by having the pasters conveyed to the judges of election with instructions to paste them over the name or names to be stricken out before the tickets are delivered to the voter. Should the county clerks or boards of election commissioners receive the notification herein provided for in time to do so, they shall have the proper correction made on the ticket while it is still in the hands of the printer. Should the exigency of time be so great as to require it, notice of the vacancy and of the compliance with this section by the chairman of the political party

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may be conveyed to the secretary of state, county clerk or board of election commissioners by telegraphic message, to be followed by the filing of the papers. The secretary of state, county clerk or board of election commissioners shall proceed immediately upon receipt of such telegram to take action as though the papers were already filed, and county clerks and boards of election commissioners shall in a similar manner act upon a telegraphic notice from the secretary of state."

The two above quoted sections of House Bill No. 2057 provide for the nomination in the situation where a vacancy in office occurs after the last Tuesday in April and before the general election to be held the same year, and, therefore, provide the method by which nominations should have been made for the office of sheriff of Clinton County to be voted on at the general election of 1950.

We are enclosing a copy of an official opinion of this department rendered under date of April 24, 1947 to Mr. Clinton Lindley, holding that elections may be held only as provided by law. Since the sheriff of Clinton County died less than nine months before the general election of 1950, such general election was the proper election at which his successor should have been chosen. A special election may be called for the election of a sheriff only where the vacancy in the office happens more than nine months preceding a general election. Since the vacancy in the office of sheriff of Clinton County happened less than nine months before the general election of 1950, there is no authority in law for the holding of a special election to elect his successor.

#### CONCLUSION

It is the opinion of this department that the county court of Clinton County, Missouri, has no authority to order a special election for the office of sheriff to fill the vacancy created by the death of the sheriff of Clinton County on November 5, 1950.

Respectfully submitted,

APPROVED:

C. B. BURNS, JR.  
Assistant Attorney General

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J. E. TAYLOR  
Attorney General  
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