

ELECTIONS: Form of Judicial Ballot approved. Instructions to County Clerks and Boards of Election Commissioners approved.

*Mimeo copies available 7-12-50*

August 18, 1950



Honorable Walter H. Toberman  
Secretary of State  
State of Missouri  
Jefferson City, Missouri

Dear Sir:

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

"Under the provisions of Sections 29 (a) to (g) of Article V of the Constitution, it is my duty to certify to the Clerks of the County Courts and to the Boards of Election Commissioners, the names of the Judges who are candidates on the Judicial Ballot, and instructions concerning the Judicial Ballot. The small number who in the past have voted the Judicial Ballot by comparison with the vote in the general election, and inquiries received by me, indicate the need for instructions with reference to the Judicial Ballot. I would appreciate your opinion whether the following would be in accordance with the law.

"1. To certify to said Clerks and Boards that the Judicial Ballot shall be in the following form:

JUDICIAL BALLOT

November 7, 1950

"Submitting to the voters whether the Judges named below, whose terms expire December 31, 1950, shall be retained in their offices

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for new terms. VOTE ON EACH JUDGE. To vote YES, scratch ~~YES~~. To vote NO, scratch ~~NO~~.

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"Shall Judge \_\_\_\_\_ of the YES  
Supreme Court of Missouri be retained  
in office? (This will appear on the  
ballots in all the voting precincts NO  
in the State.) (Scratch one)

Shall Judge \_\_\_\_\_ of the YES  
\_\_\_\_\_ Court of Appeals be  
retained in office? (This will ap- NO  
pear on the ballots in all the voting  
precincts in the State except in the  
St. Louis Court of Appeals district.)  
(Scratch one)

"Follow in same form with names of each circuit judge and other judges who are candidates in Jackson County and the City of St. Louis. My certification to each Clerk and Board will have the full name and official title to office of each Judge who is a candidate in those two jurisdictions.

"2. To instruct said Clerks and Boards as Follows:

"You are required by Section 29 (c) (2) of Article V of the Constitution to have the Judicial Ballots printed, published (see Section 11542, R. S. Mo. 1939), and distributed in the above form; and the Judicial Election shall be conducted by the same public officials and in the same manner as provided by the statutory law governing voting upon measures proposed by the initiative.

"3. To instruct said Clerks and Boards as follows:

"That the printed cards of instruction for

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the guidance of electors, required by Section 11601, R. S. Mo. 1939, to be distributed to and placed in each voting place, shall include the following:

"In voting the JUDICIAL BALLOT, vote on EACH JUDGE." To vote YES, scratch ~~Hi~~.  
To vote NO, scratch ~~YES~~."

The Judicial Ballot provided for by Section 29 of Article V of the Constitution of Missouri formerly had the following information printed at the top of such ballot:

"Submitting to the qualified voters whether the judges hereinafter named, whose terms expire on December 31, 1948 shall be retained in office:"

The addition of the phrase "VOTE ON EACH JUDGE" we believe is helpful in that it makes clear to the voters that under the nonpartisan court plan established by Section 29 of Article V of the Constitution, each Judge is to be voted on for retention or rejection.

The provision "To vote YES, scratch ~~Hi~~. To vote NO, scratch ~~YES~~." is appropriate in demonstrating the correct method of voting for or against each Judge, particularly in view of the fact that the voting for the party candidates at such election will be by means of an "X" mark.

Section 29 (c), Article V of the Constitution of Missouri, provides in part as follows:

"Whenever a declaration of candidacy for election to succeed himself is filed by any judge under the provisions of this section, the secretary of state shall not less than thirty days before the election certify the name of said judge and the official title of his office to the clerks of the county courts, and to the boards of election commissioners in counties or cities having such boards, or to such other officials as may hereafter be provided by law, of all counties and cities wherein the question of retention of such judge in office is to be submitted to the voters, and, until

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legislation shall be expressly provided otherwise therefor, the judicial ballots required by this section shall be prepared, printed, published and distributed, and the election upon the question of retention of such judge in office shall be conducted and the votes counted, canvassed, returned, certified and proclaimed by such public officials in such manner as is now provided by the statutory law governing voting upon measures proposed by the initiative."

Under the provisions of Section 29 (c) of Article V of the Constitution, quoted supra, the instruction you have listed under Point 2 of your opinion request is proper.

Section 11601, Revised Statutes of Missouri, 1939, provides as follows:

"The clerk of the county court of each county shall cause to be printed in large type, on cards, instructions for the guidance of electors preparing their ballots. He shall furnish twelve such cards to the judges of election in each election district, at the same time and in the same manner as the printed ballots. The judges of election shall post not less than one of such cards in each place or compartment provided for the preparation of ballots, and not less than three of such cards elsewhere in and about the polling place, upon the day of election. Said cards shall be printed in large, clear type, and shall contain full instructions to the voters as to what should be done: First, to obtain ballots for voting; second, to prepare the ballots for deposit in the ballot boxes; third, to obtain a new ballot in place of one accidentally spoiled; also a copy of sections 11545, 11623 and 11625."

Since such section requires that the instructions for the guidance of electors in preparing their ballots be printed on the cards required by such section, we believe it to be clear that the County Clerks and Boards of Election Commissioners should be instructed as provided in Point 3 of your opinion request.

Hon. Walter H. Toberman

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CONCLUSION

It is the opinion of this department that the form of Judicial Ballot contained in your opinion request is a correct one which should be certified to County Clerks and Boards of Election Commissioners.

It is further the opinion of this department that the proposed instructions to County Clerks and Boards of Election Commissioners, found in Points 2 and 3 of your opinion request, are correct and should be sent to such Clerks and Boards.

Respectfully submitted,

C. B. BURNS, JR.  
Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
Attorney General

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