

CONSTITUTIONAL Section 29 (b), Article V, Constitution
LAW: of Missouri, is not self-enforcing.
ELECTIONS:

September 5, 1950

9/6/50



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

Dear Sir:

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

"Enclosed you will find duplicate of a letter and petition received from Mr. Taylor Sandison on August 31, 1950. I believe his letter is self-explanatory.

"I hereby request your opinion as to what laws govern the method for effecting the change in the judicial selection authorized in Sec. 29 (b), Article V of the Constitution of the State of Missouri.

"Sec. 29 (b), which provides for the right to make the change, does not set up any provision relative to how such questions should be presented to the voters of the judicial district involved and does not state whether or not any instrument in the form of a petition, or otherwise, should be filed with the Secretary of State of Missouri."

The letter from Mr. Sandison states that petitions are being circulated requesting the submission to the voters of the Thirteenth Judicial Circuit of Missouri the question whether the court plan provided for in Section 29

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of Article V of the Constitution of Missouri should be adopted in such judicial circuit. Such letter further states that the petitions are to be filed with you as Secretary of State in an attempt to have such question placed on the ballot in the Thirteenth Judicial Circuit of this State at the general election to be held November 7, 1950.

Section 29 (b), Article V of the Constitution of Missouri, provides as follows:

"At any general election the qualified voters of any judicial circuit outside of the City of St. Louis and Jackson County, may by a majority of those voting on the question elect to have the judges of the courts of record therein appointed by the governor in the manner provided for the appointment of judges to the courts designated in Section 29 (a). The general assembly may provide the manner in which the question shall be submitted to the voters."

(Emphasis ours.)

The general rule with regard to the question of whether or not a constitutional provision is self-executing is found in Volume 16, Corpus Juris Secundum, Section 48, page 98, where it is said:

"While a constitution need not provide the details for its operation, with the object of putting it beyond the power of the legislature to render such provisions nugatory by refusing to pass laws to carry them into effect, as stated in Corpus Juris, it is within the power of those who adopt a constitution to make some of its provisions self-executing, and where the matter with which a given section of the constitution deals is divisible, one clause thereof may be self-executing and the other clause or clauses may not be self-executing."

Section 29 (g), Article V of the Constitution of Missouri, provides as follows:

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"All of the provisions of sections 29 (a) - (g) shall be self-enforcing except those as to which action by the general assembly may be required."

We find that the only provision of Section 29 of Article V of the Constitution of Missouri requiring action by the General Assembly is the provision of Section 29 (b) of Article V, underlined supra.

Since there is no provision in the Constitution of Missouri authorizing the calling of an election on the question of whether or not a judicial circuit shall adopt the court plan provided for in Section 29 of Article V of the Constitution, either by petition or otherwise, it is our view that such provision is not self-executing, particularly in view of the language of sub-section (g) of Section 29, Article V of the Constitution. If Section 29 (b) of Article V of the Constitution were self-enforcing it would mean that sub-section (g) of such section would be completely superfluous.

It is axiomatic, of course, that all the sub-sections of Section 29, Article V of the Constitution of Missouri, are to be construed together and we believe that when sub-section (g) is properly construed in relationship to sub-section (b) of such section that it is clear that the provisions of sub-section (b) are not self-executing.

CONCLUSION

It is the opinion of this department that the provisions of Section 29 (b), Article V of the Constitution of Missouri, are not self-executing.

Respectfully submitted,

C. B. BURNS, JR.
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

CBB:lrt