

ELECTIONS:

Members of boards of election commissioners provided for in Senate

ELECTION COMMISSIONERS:

Bill No. 5 of 67th General Assembly, applicable to counties containing city or part of city of more than 400,000, do not have to be confirmed by Senate.



October 2, 1953

Honorable Clayton W. Allen
State Senator
Rock Port, Missouri

Dear Sir:

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

"At the last session of the legislature, the legislature enacted Senate Bill No. 5, which provided for permanent registration in Clay County and also for board of election commissioners for Clay County.

"The bill did not provide that such commissioners, should be appointed by the Governor, with the advice and consent of the Senate.

"Section 12 of Article 4 of the Missouri Constitution defines the 'executive department', Section 17 of Article 4 of the Missouri Constitution-provides that the heads of the executive departments shall be appointed by the Governor, with the advice and consent of the Senate.

"On June 29th, 1946, Governor Phil M. Donnelly, by virtue of Section 12 of Article 4, of the Constitution of Missouri, assigned to the Governor of Missouri, the following boards, commissions and agencies of the State,

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exercising administrative or executive authority; the Missouri State Highway Patrol, Liquor Control Department, Boards of Election Commissioners and Boards of Police Commissioners.

"I would like your opinion, whether or not, under the two sections of the Constitution and under the provisions of Senate Bill No. 4, which is now Section 119.070, the board of election commissioners appointed under said act must be appointed with the advice and consent of the Senate."

The executive order dated June 29, 1946, referred to in your letter, assigned to the Governor the boards of election commissioners of St. Louis City, St. Louis County, Jackson County and Kansas City. The election board appointed under provisions of Senate Bill No. 5 of the 67th General Assembly has not as yet been assigned to any department. However, it undoubtedly will be assigned to the Governor as have been other boards of election commissioners.

Section 12, Article IV of the Constitution of Missouri, provides as follows:

"The executive department shall consist of all state elective and appointive officials and employees except the officials and employees of the legislative and judicial departments. In addition to the governor and lieutenant governor there shall be a state auditor, secretary of state, attorney general, a state treasurer and a department of revenue, department of education, department of highways, department of conservation, department of agriculture and such additional departments, not exceeding five in number, as may hereafter be established by law. Unless discontinued all present or future boards, bureaus, commissions and other agencies of the state exercising administrative or executive authority shall be assigned by the governor to the department to which their respective powers and duties are germane."

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Section 17 of Article IV of the Constitution provides as follows:

"The governor, lieutenant governor, secretary of state, state treasurer and attorney general shall be elected at the presidential elections for terms of four years eac. The state auditor shall be elected for a term of two years at the general election in the year 1948, and his successors shall be elected for terms of four years. The governor and state treasurer shall not be eligible for election as their own successors. The heads of all the executive departments shall be appointed by the governor, by and with the advice and consent of the senate. All appointive officers may be removed by the governor and shall possess the qualifications required by this Constitution or by law."

In addition to the executive departments listed in Section 12 of Article IV of the Constitution, the General Assembly has provided for the creation of a department of labor and industrial relations, a department of corrections, a department of public health and welfare and a department of business and administration.

We believe it to be clear that the provision in the last sentence of Section 12 of Article IV, providing for the assigning of boards, bureaus, commissions and other agencies to the various departments, shows that such boards, bureaus, commissions and other agencies are not themselves departments of the state.

Therefore, the provision of Section 17, Article IV, requiring that the heads of all the executive departments shall be appointed by the Governor by and with the advice and consent of the Senate, is not applicable to members of election boards.

Section 41 of Senate Bill No. 5, which provides for the creation of a board of election commissioners for each county governed by the provisions of such bill, provides that the members of such board shall be appointed by the Governor. Such section contains no reference to the advice or consent of the Senate. There is no constitutional provision requiring the advice and consent of the Senate regarding members of boards

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of election commissioners.

CONCLUSION

It is, therefore, the opinion of this office that there is no constitutional requirement that members of boards of election commissioners be appointed by the Governor by and with the advice and consent of the Senate.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. C. B. Burns, Jr.

Very truly yours,

JOHN M. DALTON
Attorney General

CBB:lrt