

ELECTIONS:

No constitutional or statutory provisions to prevent the use of voting machines as provided by Senate Committee Substitute for Senate Bills Nos. 134 and 135.

July 6, 1953



Honorable Michael J. Doherty  
Chairman  
Board of Election Commissioners  
For the City of St. Louis  
208 South 12th Boulevard  
St. Louis 2, Missouri

Dear Sir:

Reference is made to your recent request for an official opinion of this office which request reads as follows:

"The Election Board of the City of St. Louis has obtained copies of Senate Bills Nos. 134 and 135 which it understands have been passed by the Missouri Sixty-Seventh General Assembly.

"It is also understood by said Board that these Bills will become effective prior to September 1, 1953.

"It has been proposed that a Bond Issue election be held in the City of St. Louis in September, 1953.

"Sections 22, 23, 24 and 25 of said Bills above referred to contain particular provisions with reference to election laws in force at the time of the passage of said Bills.

"The Election Board of the City of St. Louis requests your official

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opinion as to whether any statutory or constitutional restriction such as the provision that each ballot be numbered would prevent it from properly using at such September Bond Issue election or subsequent elections, voting machines if the provisions of said Bills Nos. 134 and 135 were otherwise properly complied with."

You inquire whether any constitutional or statutory provisions such as the provision that each ballot shall be numbered would prevent the use of voting machines in elections as authorized by Senate Committee Substitute for Senate Bills Nos. 134 and 135, passed by the Sixty-seventh General Assembly, and approved by the Governor, May 29, 1953. Since said bill does not contain an emergency clause it will not become effective until ninety days after the adjournment of the session, which date was May 31, 1953.

Section 3 of Article VIII of the Constitution of Missouri 1945, prescribes the methods of voting as follows:

"All elections by the people shall be by ballot or by any mechanical method prescribed by law. Every ballot voted shall be numbered in the order received and its number recorded by the election officers on the list of voters opposite the name of the voter. All election officers shall be sworn or affirmed not to disclose how any voter voted: provided, that in cases of contested elections, grand jury investigations and in the trial of all civil or criminal cases in which the violation of any law relating to elections, including nominating elections, is under investigation or at issue, such officers may be required to testify and the ballots cast may be opened, examined, counted compared with the list of voters and received as evidence."

(Emphasis ours.)

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This provision allows two distinctive methods of voting, its terms being expressly in the disjunctive. 1. by ballot, 2. by any mechanical method as provided by law. Said section further provides that every ballot voted shall be numbered, etc. It is our opinion that this requirement applies only to ballots cast in the customary and established manner and not to votes cast by the use of mechanical devices as may be authorized by law. We find no other constitutional provision which would prohibit the use of voting machines.

The question of possible conflict between existing statutory, charter and ordinance provisions relating to voting procedure and the use of voting machines has received the consideration of the General Assembly. Sections 24 and 25 of Senate Committee Substitute for Senate Bills Nos. 134 and 135 provide as follows:

"Section 24. The provisions of all state laws relating to elections and of any city charter or ordinance not inconsistent with this chapter shall apply to all elections in districts or precincts where voting machines are used.

"Section 25. Any provision of law, or of any city charter, or ordinance which conflicts with the use of voting machines set forth in this act, shall not apply to districts, wards, or precincts in which voting machines are used. All acts, or parts of acts, or city charters, or ordinances, in conflict with any of the provisions of this act, are of no force or effect in election districts, wards or precincts where voting machines are used."

Under the above provisions all state laws, charter or ordinance provisions relating to elections, and which are not in conflict with the use of voting machines, shall apply to elections in districts or precincts where voting machines are used. In the event of conflicts, such provisions are of no force or effect. Said provisions clearly indicate the legislative intention that the provisions of the Bill should be construed to prevail over other inconsistent provisions and we so view it.

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CONCLUSION

Therefore, in the premises, it is the opinion of this office that there are no existing constitutional or statutory provisions which would prevent the use of voting machines after Senate Committee Substitute for Senate Bills Nos. 134 and 135 of the Sixty-seventh General Assembly becomes effective and its provisions are otherwise complied with.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. D. D. Guffey.

Very truly yours,

JOHN M. DALTON  
Attorney General

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