

ELECTIONS:
VOTING MACHINES:



- 1) Propositions to be voted upon should appear on the ballot in the same order in which they appear in petitions circulated among voters;
- 2) In precincts where voting machines are used there need be no rotation of the names of candidates;
- 3) Not legal to reconstruct election precincts so that each precinct would have approximately 800 voters instead of the number now provided by law.

December 16, 1953

Board of Election Commissioners
Kansas City,
Missouri.

Gentlemen:

This department is in receipt of your recent request for an official opinion. The opinion request reads as follows:

"1. When there are to be five separate propositions to be submitted at a special bond election is there any requirement that the order of the propositions appear on the ballots in the same order as they appeared on the petitions which were circulated and signed by the requisite number of qualified voters and taxpayers of Kansas City, Missouri. In other words if the ~~new~~ voting machine proposals appeared in numerical order 1 and 2 in the petitions and the provisions for the courthouse improvements and a new courthouse appeared as 3, 4 and 5 on the voter's petition would it be necessary to have these propositions appearing in the same order on the ballot.

" This question has come up because the County Judges desire to place propositions three, four and five as it appeared on the petitions in numerical order one, two and three. This for the reason it would more readily come to the attention of the voters.

"2. Under the new voting machine law there is no requirement made for the rotation of candidate's name as is presently required under Section 120.450 R.S.Mo. 1949. The board should like to know if in the event voting machines are adopted would this conflict prevent the practicable application and use of such voting machines or does the voting machine law which was enacted subsequent to the above Section 120.450 supersede the above section in so far as it conflicts therewith.

"3. The election board has found by research and survey that it would be practical to divide the voting precinct into numbers approximating eight-hundred voters each and

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that would be the plan in the event voting machines are adopted. However, Section 117.200 would seem to restrict the number of voters in a section to approximately five-hundred. Therefore, the board would like to know if they are required to restrict the number of precincts to five hundred voters in view of the fact they will be operating under the new voting machine law which was passed subsequent to 117.200. It might be pointed out that there is no provision for the number of voters in a voting precinct under the new voting machine law.

"We would appreciate your opinion on the above matters as soon as practicable."

Your first question is whether the five separate propositions to be voted on must appear on the ballot in the same order in which they appeared on the petition which was circulated for signature by voters, or whether that order can be changed.

In answer to this question we will state that we have been unable to find any law which directly or indirectly indicates that the order in which propositions appear on a circulated petition is the order in which such propositions must appear on the ballot. In the absence of any directive in this matter we feel that the order of the propositions in the petition should be maintained on the ballot. We believe, therefore, that the five propositions which you mention should appear upon the ballot in the order in which they appeared in the petitions.

Your second question is whether, when voting is by means of a voting machine, there must be a rotation of the names of candidates such as is required by Section 120.450, RSMo 1949.

We believe that there need not now be compliance with Section 120.450, supra, insofar as the rotation of names is concerned. In an opinion rendered on July 6, 1953, to Honorable Michael J. Doherty, Chairman, Board of Election Commissioners of St. Louis, a copy of which is enclosed, we held that the constitutional provision which requires that ballots be numbered did not apply when voting was by machine. This holding was bottomed upon the theory that the Constitution (Section 3, Article IV) provides one procedure when voting is by ballot and another procedure when voting is by machine, and that the procedure of voting by ballot does not apply to machine voting when there is a conflict between the two procedures.

In this regard Paragraph 4 of Section 8 of Senate Bills Nos. 134 and 135, reads as follows:

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"The order of the arrangement of parties and candidates shall be as now provided by law not in conflict herewith except that the conditions for nomination for any one office at any primary election shall be listed in the order of filing, and the order of the arrangement of the parties on the state and county primary elections shall be as now provided by law for general elections."

We here call particular attention to the word "conditions" above. In the position in which it is placed we are unable to attribute any meaning to it. We feel that it is a typographical error and that the word intended was "candidates". We shall, therefore, proceed on the assumption that the word meant is "candidates". The paragraph would then read:

"The order of the arrangement of parties and candidates shall be as now provided by law not in conflict herewith except that the candidates for nomination for any one office at any primary election shall be listed in the order of filing, and the order of the arrangement of the parties on the state and county primary elections shall be as now provided by law for general elections."
(Emphasis ours.)

The underlined portion of the above paragraph is believed to be in direct conflict with the provision of Section 120.450, supra, which requires rotation of names, and since it is in conflict prevails in view of Sections 22, 23 and 24 of the Voting Machine Law which sections read as follows:

"Section 22. All of the election laws now in force, and not inconsistent with the provisions of this act, shall apply with full force and effect to elections in cities and counties using voting machines. Nothing in this act shall be construed as prohibiting the use of a separate ballot for constitutional amendments and other public measures.

"Section 23. Where voting machines have been adopted under the provisions of this act for use at general or special elections, such machines may be used at primary elections. When so used all provisions of the law applying to their use at general or special elections not inconsistent with the provisions of this act, and all provisions of this act so far as applicable shall apply to the use of such voting machines at such primary elections.

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"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."

And finally, we direct attention to Section 7 of the Voting Machine Law, which states that: "Any kind or type of voting machine shall be approved which is so constructed as to fulfill the following requirements:", after which is a list of thirteen requirements none of which touches upon the matter of rotation of names. It is, therefore, our belief that when voting is by a machine, rotation of names of candidates is not necessary.

Your third question is whether, if voting machines are adopted, it would be legal to divide the voting precincts in numbers of approximately eight hundred voters each instead of having approximately five hundred voters in each precinct as is now provided by Section 117.200, RSMO 1949.

We here note that Section 117.200 RSMo 1949 was repealed by Senate Bill 111 which was enacted by the 66th General Assembly. However, this section, which was re-enacted as Section 117.190, does not change the repealed section in respect to the number of voters in a precinct.

It is our opinion that these precincts could not be changed to have approximately eight hundred voters each instead of the five hundred which is now provided by Section 117.190, supra.

As we have pointed out above, and as is pointed out in the Doherty opinion, a copy of which is enclosed, when there is a conflict between State laws relating to elections and the Voting Machine Law, the latter law shall prevail in those places where voting machines are used, but that State laws which are not in conflict with any of the provisions of the Voting Machine Law shall apply to elections in precincts where voting machines are used. Since, as you point out, there is no provision in the Voting Machine Law regarding the voters in a precinct, there can be no conflict with the provisions of Section 117.190, supra, that this number shall be approximately five hundred, and accordingly, Section 117.190 will apply in precincts where voting machines are used.

CONCLUSION

It is the opinion of this department:

1) That propositions to be voted upon should appear on the ballot in the same order in which they appear in petitions

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circulated among voters;

2) That in those precincts where voting machines are used there need be no rotation of the names of candidates;

3) That it would not be legal to redistrict election precincts so that each precinct would have approximately eight hundred voters instead of the number which is now provided by law.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Hugh P. Williamson.

Very truly yours,

HPW/ld

JOHN M. DALTON
Attorney General