

SENATORIAL REDISTRICTING
COMMISSION:

The commission must file its report not later than August 14, 1961. If state senatorial reapportionment is properly accom-

plished this year, the result will be (1) that the present senators will serve the balance of their present terms, through 1962 or 1964, depending upon whether they were elected in 1958 or 1960, (2) that senators will be elected in 1962 from the new even-numbered districts, (3) that senators will be elected in 1964 from the new odd-numbered districts, and (4) the senate in 1963 and 1964 will consist of the senators elected in 1960 from the old odd-numbered districts and those elected in 1962 from the new even-numbered districts.

June 30, 1961

Honorable James W. Farley
Senatorial Redistricting Commission
Farley, Missouri



Dear Mr. Farley:

We are in receipt of your letter dated June 16, 1961, requesting an answer to the following questions:

"1. What is the last date on which the report of the Senatorial Redistricting Commission can be filed? It is our understanding that the appointment of the commission was made by the Governor on February 15, 1961.

"2. Senators for the odd numbered districts were elected in 1960 and will be elected in 1964. The Senators for the even numbered districts will be elected in 1962. In the event a district bearing an odd number is renumbered with an even number or in the event an even numbered district is renumbered with an odd number, what effect will such action have upon incumbent senators and the date of the next election for such districts?

"3. In the event that a district now located outside of Jackson County, St. Louis County, or St. Louis City is relocated within said counties or cities, how long will the incumbent senator continue in (a) case of an odd numbered district (b) case of an even numbered district?

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"4. In the event that two incumbent senators reside in the same district after the new redistricting plan goes into effect, one who was elected in 1960 and one who was elected in 1958, which senator would represent the district and how long would each continue to serve? In the event that both were elected in 1960 or both were elected in 1958, how long would each continue to serve?"

The following provision of the Missouri State Constitution and RSMo 1959 appear to be applicable:

Article III, Missouri State Constitution.

"Section 7. Within sixty days after this Constitution takes effect, and thereafter within sixty days after the population of the state is reported to the President for each decennial census of the United States, the state committee of each of the two political parties casting the highest vote for governor at the last preceding election shall submit to the governor a list of ten persons, and within thirty days thereafter the governor shall appoint a commission of ten members, five from each list, to reapportion the thirty-four senators and the numbers of their districts among the counties of the state. If either of the party committees fail to submit a list within such time the governor shall appoint five members of his own choice from the party of such committee. Each member of the commission shall receive fifteen dollars a day, but not more than one thousand dollars. The commission shall reapportion the senators by dividing the population of the state by the number thirty-four, and the population of no district shall vary from the quotient by more than one-fourth thereof.

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The commission shall file with the secretary of state a full statement of the numbers of the districts and the counties included in the districts, and no statement shall be valid unless approved by seven members. After the statement is filed senators shall be elected according to such districts until a reapportionment is made as herein provided, except that if the statement is not filed within six months of the time fixed for the appointment of any such commission it shall stand discharged and the senators to be elected at the next election shall be elected from the state at large, following which a new commission shall be appointed in like manner and with like effect. No such reapportionment shall be subject to the referendum."

"Section 11. The first election of senators and representatives under this Constitution, shall be held at the general election in the year one thousand nine hundred and forty-six when the whole number of representatives and the senators from the districts having even numbers, who shall compose the first class, shall be elected, and two years thereafter the whole number of representatives and the senators from districts having odd numbers, who shall compose the second class, shall be elected, and so on at each succeeding general election."

In regard to Question No. 1, it appears that Section 7, Article III of the present Missouri Constitution, as set out above, governs this question. Within sixty days after the population of this state is reported to the President for each decennial census of the United States, the state committee of each of the two political parties casting the highest vote for governor at the last preceding election shall submit to the governor a list of ten persons, and within thirty days after this sixty-day period, the governor shall appoint a commission

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of ten members, five from each list, to reapportion the thirty-four senators and their districts. This is the period of time fixed for the appointment of the commission, and the commission must complete its work and file its statement with the Secretary of State within six months after the expiration of this ninety-day period.

Records at the Bureau of the Census, Washington, D. C., indicate that the date on which the population of the state was reported to the President for the 1960 decennial census of the United States was November 15, 1960. February 13, 1961, was the last day of the above mentioned ninety-day period. Therefore the commission must finish its work and file its report within six months after February 13, 1961.

The terms "month" and "year" are defined in subsection (6) of Section 1.020, RSMo 1959, and the title and introduction of this section and the subsection in its entirety are as follows:

"1.020. Definitions - As used in the statutory laws of this state, unless otherwise specially provided or unless plainly repugnant to the intent of the legislature or to the context thereof:

(6) 'Month' and 'year'. 'Month' means a calendar month, and 'year' means a calendar year unless otherwise expressed, and is equivalent to the words 'year of our Lord'."

Additional Revised Statutes of Missouri, 1959, governing the computation of time are as follows:

"Section 1.040. Computation of time. The time within which an act is to be done shall be computed by excluding the first day and including the last. If the last day is Sunday, it shall be excluded."

"Section 506.060, Subsection 1. In computing any period of time prescribed or allowed by this code, by order of court, or by any applicable statute, the day of the

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act, event or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Sunday or a legal holiday, in which event the period runs until the end of the next day which is neither a Sunday nor a legal holiday. When the period of time prescribed or allowed is less than seven days, intermediate Sundays and legal holidays shall be excluded in the computation. A half holiday shall be considered as other days and not as a legal holiday."

Section 1.040, RSMo 1959, is the basic computation of time statute in this state. It provides that the time within which an act is to be done shall be computed by excluding the first day and including the last. Subsection (6) of Section 1.020 defines the term "month." These sections are helpful in interpreting Section 7, of Article III, of our Constitution relative to time limits for the senatorial redistricting commission.

However, it may be pointed out that these are statutory enactments and that Section 1.020 itself uses the phraseology "as used in the statutory laws of this state," and that the problem before us is one of interpreting a constitutional provision. Even if this question is raised, by analogy, the labors of the senatorial redistricting commission are legislative in character.

The Supreme Court has held, in the case of State ex rel. Barrett v. Hitchcock, 241 Mo. 433, 146 S.W. 40, that the act of establishing senatorial districts, whether accomplished by the General Assembly or by some other group or body, is an exercise of legislative authority. The court said:

"That the districting of the state into legislative, senatorial, congressional, and judicial districts is the exercise of legislative authority cannot be successfully questioned. All of the authorities so hold, and it has been the uniform practice in this and all other states, in so far as I have been able to ascertain; that, too, has been the procedure with the

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United States government. That authority is akin to and flows from the same power and authority that fixes the boundary lines of the state, and subdivides the state into counties, etc. Not only that, but the very same section of the Constitution which authorizes and empowers the Legislature proper to apportion and redistrict the state into senatorial districts also provides for and empowers this body of three state officials to redistrict it, in case the General Assembly neglects or fails to do so. That being true, and both deriving their authority from the same source, and performing precisely the same duties, it must stand to reason that, if the labors of the General Assembly are legislative, then the work of this body must also be legislative in character. We call the one an act of the General Assembly, the other the statement of the Miniature Legislature."

Since the function is legislative, the senatorial apportionment commission, as set up under the Constitution of 1945, must act in the exercise of a delegated legislative power. It seems logical that as a legislative authority it should be subject to the same rules as to computation of time as the state legislature and the statutory enactments of the state legislature. Also, these computation of time statutes were in force at the time the 1945 Constitution was drafted and it would seem that if the framers intended to be governed by a different method of computing time, they would have provided therefor. Scrutiny of the 1944 Constitutional Convention Debates reveals no discussion as to how the time should be computed in interpreting this section.

Text authorities generally favor the method provided in the Missouri statutes. Crawford, in his work, Statutory Construction, p. 166, states: "The general, as well as the sensible, rule is that the day, or the day on which the required act was performed, and from which the time is to be computed, shall be excluded, and the last day of the number constituting the required period shall be included. Any rule which includes the day on which the act is performed is fairly subject to criticism,

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unless the act is performed at the earliest possible moment of the day; otherwise, the computation starts before the act is performed."

If there is any further doubt in the matter the Supreme Court of Missouri in the case of State v. Atteberry, 300 S.W. 2d 806, has held generally that the constitution is subject to the same rules of interpretation and construction as other laws. The court stated:

"The constitution, in general, is subject to the same rules of construction as other laws, due regard being given to its broader scope and objects, as a charter of popular government, and the intent of the organic law is the primary object to be attained in construing it. State ex rel. Harry L. Hussman Refrigerator & Supply Co. v. City of St. Louis, 319 Mo. 497, 5 S.W.2d 1080, 1084 [4].* * *"

In the absence of evidence to the contrary, it appears that the computation of time provided for in Section 7 of Article III of our Constitution should be made on the same basis as that provided for in the general laws of this state. Therefore it would appear that the commission must finish its work and file its report within six months after February 13, 1961.

We believe that your questions numbered (2), (3), and (4), are answered in a letter dated May 25, 1961, from this office and which we quote from as follows:

"Assuming that reapportionment of the state senators and the numbers of their districts is accomplished this year in accordance with Article III, Section 7, Constitution of Missouri, the results, under the above mentioned constitutional provisions, will be (1) that the present senators will serve the balance of their present terms, i.e., through 1962 or 1964, depending upon whether they were elected in 1958 or 1960, (2) that senators will be elected in 1962 from the new even-numbered districts, (3) that senators will be elected in 1964 from the new odd-numbered districts, and (4) the senate in

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1963 and 1964 will consist of the senators elected in 1960 from the old odd-numbered districts and those elected in 1962 from the new even-numbered districts.

"This is the manner in which the pertinent constitutional provisions were construed, in practice, following the 1946 and 1951 reapportionments (see senate rosters in the Blue Book for 1947-48, pages 163-4, and the Blue Book for 1953-54, pages 173-4, and the footnotes thereto.)

"It may be noted that, depending upon how the matter is handled by your Commission, it is possible that in 1963 and 1964 there would be some new districts in which two or more senators resided and some new odd-numbered districts without senators. However, this is exactly what happened in 1947 and 1948; and, while relatively minor changes were made in the 1951 reapportionment and we have not fully checked the facts, it is possible that the same thing occurred in 1953 and 1954 with respect to districts in St. Louis City, St. Louis County, or Jackson County.

"Now, to apply the foregoing to your specific question: Changes in the numbers of the districts would have no effect upon the present senators insofar as their present terms are concerned. On the other hand, such changes could be quite significant with respect to reelection. For example, assume that no change is made in a district which now has an even number except that it is given an odd number. The senator now representing the district would be up for reelection in 1962 but, with an odd number, the district would elect no senator that year, and the present senator would be out of the senate.

"Again, for example, assume that no change is made in a district which now has an odd number except that it is given an even number. The term of the senator now representing the district would run through 1964. However, with an even number, the district would elect another senator in 1962,

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and there would be no senator to be elected in the district in 1964, so the present senator would be out of the senate at the end of his present term.

"Since renumbering may be combined with changes in district lines, and the places of residence of the present senators may also be factor, there are a wide variety of situations which may arise and it is impossible for us to go into all conceivable ramifications of this problem. However, the numbering of the districts is quite important not only from the standpoint of the present senators but, also, with respect to proper representation of various portions of the state in the senate in 1963 and 1964; and we hope that our comments above will help you in determining the effect of various plans for reapportionment which may be considered."

Reference to the 1944 Constitutional Convention Debates indicates the above analysis is correct. At p. 4287, we note the following discussion:

"Mr. Phillips: Now, I notice that in the Constitution of 1865 they first established this rule of classification of Senators. Now, in that Constitution they declared all of the offices vacant so that you had an entirely new election of Senators at the first election and elected your Senators, some for two years and some for four years. Now, as I understand it, this follows the rule in 1875.

"Mr. McReynolds: That's right.

"Mr. Phillips: And the practical effect of it is that the senators who were elected in 1942 will stay over. They will hold over. Is that correct?

"Mr. McReynolds: Well, that is the purpose of it as it was written.

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"Mr. Phillips: Yes, until 1946, and then in their districts seventeen Senators will be elected?"

"Mr. McReynolds: That's correct.

"Mr. Phillips: In '46. Now, then, at this election this fall there are seventeen Senators running for terms of four years?"

"Mr. McReynolds: Yes, sir.

"Mr. Phillips: And their terms will expire in '48 so that these Senators who are running will be holdover Senators under this provision. Is that correct?"

"Mr. McReynolds: That's correct.

"Mr. Phillips: And they run at their peril as to their districts being changed by the Redistricting Commission. Is that correct?"

"Mr. McReynolds: That's correct."

Conclusion

It is our conclusion that the commission must file its report not later than August 14, 1961. If state senatorial reapportionment is properly accomplished this year the result will be (1) that the present senators will serve the balance of their present terms, through 1962 or 1964, depending upon whether they were elected in 1958 or 1960, (2) that senators will be elected in 1962 from the new even-numbered districts, (3) that senators will be elected in 1964 from the new odd-numbered districts, and (4) the senate in 1963 and 1964 will consist of the senators elected in 1960 from the old odd-numbered districts and those elected in 1962 from the new even-numbered districts.

The foregoing opinion which I hereby approve, was prepared by my assistant, Clyde Burch.

Yours very truly,

THOMAS F. EAGLETON
Attorney General

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