

OPINION NO. 164, Answered by Letter
Joseph Nessenfeld

164

April 13, 1962

Honorable Warren E. Hearnes
Secretary of State
Jefferson City
Missouri

Dear Mr. Hearnes:

You have requested the opinion of this office as follows:

"If the initiative process is used in 1962 to propose an amendment to the Missouri Constitution to be voted upon at the General Election in 1962, please advise me if I would be correct in requiring that said petitions be signed by eight percent of those voters voting for John M. Dalton at the General Election in 1960 in each of two-thirds of the Congressional Districts set out in CSHCSSCSB No. 363 as passed by the 71st General Assembly."

Section 50, Article III of the Constitution provides that initiative petitions proposing amendments to the Constitution shall be signed by eight percent of the legal voters in each of two-thirds of the Congressional Districts of the state. Under Section 53, Article III of the Constitution the total vote for governor at the general election last preceding the filing of any initiative petition shall be used to determine the number of legal voters necessary to sign the petition.

Under the 1950 census, Missouri was entitled to eleven representatives in the House of the Congress of the United States.

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Pursuant to the mandate of Section 45, Article III of the Constitution, the General Assembly divided the state "into districts corresponding with the number of representatives to which it is entitled", that is, eleven.

Under the 1960 census, Missouri will be entitled to only ten representatives in the 88th and four succeeding Congresses. Again, pursuant to Section 45, Article III of the Constitution the 71st General Assembly divided the state into ten districts from each of which a representative will be elected at the next ensuing general election to serve in the 88th Congress.

In our opinion, except for the purpose of preparing for the election of such representatives, the new congressional districts have no existence as such at the present time. Until the 88th Congress, Missouri will still have eleven representatives in Congress, each of whom was elected from a district as theretofore established. In the event of a vacancy in the office of any such representative, his successor to fill the unexpired term would be elected from whichever of the eleven districts the vacancy occurred. Hence, these eleven districts necessarily remain in existence as Congressional districts until January, 1963.

A congressional district within the meaning of Section 50, Article III of the Constitution is one which is presently entitled to a representative in Congress. The newly created congressional districts are not presently entitled to elect a representative in Congress. They are effective only with respect to the 88th and succeeding congresses. It is true that the Act which establishes the ten new congressional districts also repeals those sections of the statutes which established the eleven districts. However, in our opinion, such repeal does not operate to abolish the existence of the eleven districts for all purposes. This becomes evident when it is realized that the authority to establish ten, rather than eleven, districts exists only with respect to the election of representatives in the 88th and succeeding Congresses. Missouri could not validly establish ten districts except prospectively.

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In our opinion, therefore, the congressional districts which must be considered for the purpose of determining the sufficiency of referendum petitions are those congressional districts from which the eleven existing representatives in congress from Missouri were elected. CSHCSSCSSB No. 363 passed by the 71st General Assembly should be considered as prospective in operation only, and the districts thereby created are effective as such within the meaning of Section 50 of Article III of the Constitution only after the expiration of the terms of the present eleven representatives in Congress from Missouri.

Yours very truly,

THOMAS F. EAGLETON
Attorney General

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