

(Opinion #322 answered by letter)
Eagleton

August 5, 1963



Honorable Thomas A. Walsh
State Representative
Room 314, Capitol Building
Jefferson City, Missouri

Dear Representative Walsh:

We have your letter of July 19, 1963, which reads as follows:

"I notice that a suit has been filed in Federal District Court in St. Louis challenging the constitutionality of the method of apportionment of the Missouri House of Representatives.

"This suit, as I gather it, is similar in nature to suits filed in many states following the 1962 opinion of the Supreme Court of the United States in Baker vs. Carr.

"I realize that since you as Attorney General will defend the Governor and the Secretary of State in the above-mentioned lawsuit that you cannot at this time detail any opinions which might be involved in that suit.

"However, in this general area of legislative reapportionment, I have two questions which I feel you may well be in a position to answer easily.

"#1. Under Art. III, Secs. 49, 50, and 53 of the 1945 Missouri Constitution, assuming that all of the technical procedures are followed, can a constitutional amendment be submitted by the initiative method which would change the method of apportionment of the Missouri House of Representatives?

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#2. Baker vs. Carr, as I understand it, was a case out of Tennessee. Was there available to the citizens of Tennessee any type of initiative procedure by which the citizens of the state could amend the Tennessee State Constitution?"

Our answer to Question #1 is Yes. Our system of legislative apportionment as set out in the 1945 Constitution in Art. III, Secs. 2 and 3 can be amended by the initiative process just as other portions of our Constitution can be amended by the same process.

Our answer to Question #2 is No and I quote in full footnote 14 of the opinion of the United States Supreme Court in Baker v. Carr, 369 U.S. 186 (1962).

"The appellants claim that no General Assembly constituted according to the 1901 Act will submit reapportionment proposals either to the people or to a Constitutional Convention. There is no provision for popular initiative in Tennessee. Amendments proposed in the Senate or House must first be approved by a majority of all members of each House and again by two-thirds of the members in the General Assembly next chosen. The proposals are then submitted to the people at the next general election in which a Governor is to be chosen. Alternatively, the legislature may submit to the people at any general election the question of calling a convention to consider specified proposals. Such as are adopted at a convention do not, however, become effective unless approved by a majority of the qualified voters voting separately on each proposed change or amendment at an election fixed by the convention. Conventions shall not be held oftener than once in six years. Tenn Const, Art II, section 3, Acts of 1951, c.130, section 3, and Acts of 1957, c. 340, section 3, provided that delegates to the 1953 and 1959 conventions were to be chosen from the counties and floterial districts just as are members of the State House of Representatives. The General Assembly's call for a 1953 Constitutional Convention originally contained a provision 'relating to the appointment (sic) of representatives and Senators' but this was excised. Tenn HJ, 1951, 784. A Resolution introduced at the 1959 Constitutional Convention and reported unfavorably by the Rules Committee of the Convention was as follows:

'By Mr. Chambliss (of Hamilton County), Resolution No. 12- Relative to Convention considering reapportionment, which is as follows:

'WHEREAS, there is a rumor that this Limited Convention has been called for the purpose of postponing for six years a Convention that would make a decision as to reapportionment; and

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'WHEREAS, there is pending in the United States Courts in Tennessee a suit under which parties are seeking, through decree, to compel reapportionment; and

'WHEREAS, it is said that this Limited Convention, which was called for limited consideration, is yet a Constitutional Convention within the language of the Constitution as to Constitutional Conventions, forbidding frequent Conventions in the last sentence of Article Eleven, Section 3, second paragraph, more often than each six years, to-wit:

"No such Convention shall be held oftener than once in six years."

'NOW, THEREFORE, BE IT RESOLVED, That it is the consensus of opinion of the members of this Convention that since this is a Limited Convention as hereinbefore set forth another Convention could be had if it did not deal with the matters submitted to this Limited Convention.

'BE IT FURTHER RESOLVED, That it is the consensus of opinion of this Convention that a Convention should be called by the General Assembly for the purpose of considering reapportionment in order that a possibility of Court enforcement being forced on the Sovereign State of Tennessee by the Courts of the National Government may be avoided.

'BE IT FURTHER RESOLVED, That this Convention be adjourned for two years to meet again at the same time set forth in the statute providing for this Convention, and that it is the consensus of opinion of this body that it is within the power of the next General Assembly of Tennessee to broaden the powers of this Convention and to authorized and empower this Convention to consider a proper amendment to the Constitution that will provide, when submitted to the electorate, a method of reapportionment.' Tenn. Constitutional Convention of 1959, The Journal and Debates, 35, 278. (Emphasis supplied.)

Yours very truly,

THOMAS F. EAGLETON
Attorney General