

CONSTITUTIONAL LAW:

Article XII, Section 3(a), (b) and
(c) of the Missouri Constitution

provides no method by which a constitutional convention may be limited in its consideration of proposed amendments.

OPINION NO. 464

December 20, 1971

Honorable J. Anthony Dill
Representative, District 44
8011 Grandvista Avenue
St. Louis, Missouri 63123



Dear Representative Dill:

This is in reply to your request for an opinion of this office concerning Article XII of the Constitution of the State of Missouri your specific question being:

"Is it possible under Article 12 of the constitution of the State of Missouri to convene a limited State Constitutional Convention for the purpose of amending a specific Article or several specific Articles of the state constitution?"

Our research leads us to conclude that your question must be answered negatively. By reference to Article XII, Constitution of Missouri, it can be seen that there are three different procedures available for revising the Constitution of Missouri. These methods are: (1) submission of a proposed Constitution or amendments to the people by a constitutional convention; (2) proposal of amendments by a joint resolution of the General Assembly, and (3) proposal of amendments by citizen petition. Your particular question is ruled by Article XII, Section 3(a), (b) and (c). See also Sections 125.050 and 125.090, RSMo 1969.

The relevant constitutional sections provide:

"At the general election on the first Tuesday following the first Monday in November 1962, and every twenty years thereafter, the secretary of state shall, and at any general or special election the general assembly by law may, submit to the electors of the state the question 'Shall there be a convention to revise and amend the Constitution?'. The question shall be submitted on a separate ballot without party designation, and if a majority

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of the votes cast thereon is for the affirmative, the governor shall call an election of delegates to the convention on a day not less than three nor more than six months after the election on the question. At the election the electors of the state shall elect fifteen delegates-at-large and the electors of each state senatorial district shall elect two delegates. Each delegate shall possess the qualifications of a senator; and no person holding any other office of trust or profit (officers of the organized militia, school directors, justices of the peace and notaries public excepted) shall be eligible to be elected a delegate. To secure representation from different political parties in each senatorial district, in the manner prescribed by the senatorial district committee each political party shall nominate but one candidate for delegate from each senatorial district, the certificate of nomination shall be filed in the office of the secretary of state at least thirty days before the election, each candidate shall be voted for on a separate ballot bearing the party designation, each elector shall vote for but one of the candidates, and the two candidates receiving the highest number of votes in each senatorial district shall be elected. Candidates for delegates-at-large shall be nominated by nominating petitions only, which shall be signed by electors of the state equal to five per cent of the legal voters in the senatorial district in which the candidate resides until otherwise provided by law, and shall be verified as provided by law for initiative petitions, and filed in the office of the secretary of state at least thirty days before the election. All such candidates shall be voted for on a separate ballot without party designation, and the fifteen receiving the highest number of votes shall be elected. Not less than fifteen days before the election, the secretary of state shall certify to the county clerk of the county the name of each person nominated for the office of delegate from the senatorial district in which the county, or any part of it, is included, and the names of all persons nominated for delegates-at-large." (Section 3(a))

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"The delegates so elected shall be convened at the seat of government by proclamation of the governor within six months after their election. The facilities of the legislative chambers and legislative quarters shall be made available for the convention and the delegates. Upon convening all delegates shall take an oath or affirmation to support the Constitution of the United States and of the state of Missouri, and to discharge faithfully their duties as delegates to the convention, and shall receive for their services the sum of ten dollars per diem and mileage as provided by law for members of the general assembly. A majority of the delegates shall constitute a quorum for the transaction of business, and no Constitution or amendment to this Constitution shall be submitted to the electors for approval or rejection unless by the assent of a majority of all the delegates elect, the yeas and nays being entered on the journal. The convention may appoint such officers, employees and assistants as it may deem necessary, fix their compensation, provide for the printing of its documents, journals, proceedings and a record of its debates, and appropriate money for the expenditures incurred. The sessions of the convention shall be held with open doors, and it shall determine the rules of its own proceedings, choose its own officers, and be the judge of the election, returns and qualifications of its delegates. In case of a vacancy by death, resignation or other cause, the vacancy shall be filled by the governor by the appointment of another delegate of the political party of the delegate causing the vacancy." (Section 3(b))

"Any proposed Constitution or constitutional amendment adopted by the convention shall be submitted to a vote of the electors of the state at such time, in such manner and containing such separate and alternative propositions and on such official ballot as may be provided by the convention, at a special election not less than sixty days nor more than six months after the adjournment of the convention. Upon the approval of the Constitution or constitutional

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amendments the same shall take effect at the end of thirty days after the election. The result of the election shall be proclaimed by the Governor." (Section 3(c))

By reference to the three above cited sections, it can be seen that they do not admit of a procedure by which a constitutional convention may be limited in the scope of its consideration of the Constitution. Cases before the Missouri Supreme Court involving the power of constitutional conventions indicate that a properly convened constitutional convention has plenary control over its proceedings. In State ex rel. News Corporation v. Smith (Mo.Sup. en banc 1945) 184 S.W.2d 598, an original proceeding in mandamus was brought to compel the State Auditor to approve a voucher and issue a warrant for the payment for the printing of the newsletter of the constitutional convention; in that opinion the court stated:

" . . . There is nothing in the Constitution requiring the Convention to proceed in any particular manner, that is, by bill or ordinance, nor is there any requirement that its plan for submission of its work must be merged into one ordinance or resolution. . . ." [loc. cit. 600]

Clearly, Article XII, Section 3(a), (b) and (c) provides no procedure by which a constitutional convention may be limited to the consideration of a specific amendment or several specific amendments for consideration. The Supreme Court of Missouri, in an analogous area considering the proper procedure for amending the Constitution by initiative, stated in Moore v. Brown (Mo.Sup. en banc 1942) 165 S.W.2d 657:

" . . . It is fundamental that the people, themselves, are bound by their own Constitution, 1 Cooley on Constitutional Limitations, 8 Ed., p. 81. Where they have provided therein a method for amending it, they must conform to that procedure. Any other course would be revolutionary, the cases have said. . . ." [loc. cit. 659; emphasis the Court's]

Article XII, Section 3(a), (b) and (c) provide no method by which a constitutional convention may be limited in its consideration of proposed amendments, and therefore we conclude that there is no legal method by which a Missouri constitutional convention may be limited in its consideration to specific proposed amendments.

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CONCLUSION

It is therefore the opinion of this office that Article XII, Section 3(a), (b) and (c) of the Missouri Constitution provides no method by which a constitutional convention may be limited in its consideration of proposed amendments.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Kenneth M. Romines.

Yours very truly,

A handwritten signature in cursive script, appearing to read "John C. Danforth". The signature is written in dark ink and is positioned above the printed name.

JOHN C. DANFORTH
Attorney General