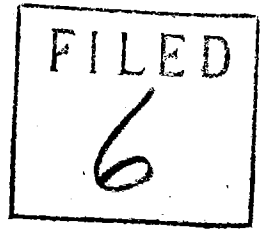


ELECTIONS: Secretary of State in canvassing of votes for members of congress, state senators and representatives and judges of the circuit courts does not follow procedure laid down in Section 18, Article IV of the Constitution of Missouri.

November 27, 1946



Honorable Wilson Bell
Secretary of State
Jefferson City, Missouri

Dear Sir:

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

"Our office has been questioned as to whether Section 18, Article IV of the New Constitution was applicable to the counting of the election returns which we will start on in a few days.

"As it specifically names the elective officials only, we were of the opinion that it did not apply to this election.

"However, knowing it is best to be on the safe side in such matters, may we ask that you give us your opinion."

Section 18, Article IV of the Constitution of Missouri 1945 referred to in your request provides as follows:

"The returns of every election for governor, lieutenant governor, secretary of state, state auditor, state treasurer and attorney general shall be sealed and transmitted by the returning officers to the secretary of state, who shall appoint two disinterested judges of a court of record of the state, and the three shall constitute a board of state canvassers. The board shall meet at the State Capitol on the second Tuesday of December next after the election and forthwith open and canvass the returns of the votes cast and from the face thereof ascertain and proclaim the result of

November 27, 1946

the election. The persons having the highest number of votes for the respective offices shall be declared elected, and if two or more persons have an equal and the highest number of votes for the same office, at its next regular session the general assembly, by joint vote and without delay, shall choose one of such persons for the office."

The duty imposed upon the secretary of state in regard to canvassing of votes cast for certain offices in this state is set forth in Sections 11463 and 11466 R. S. Mo. 1939.

Section 11463 provides as follows:

"The clerks of the several courts to whom a transcript of the votes is directed shall, within two days after the time limited for the examination of the polls, deliver to the nearest postoffice on the most direct route to the seat of government, addressed to the secretary of state, a fair abstract of the votes given in their respective counties, by precincts, for members of congress, governor, lieutenant-governor, state senators and representatives, judges of the supreme court, judges of the St. Louis and Kansas City courts of appeals, judges of the circuit courts, secretary of state, state auditor, state treasurer, attorney-general, railroad and warehouse commissioners and superintendent of public schools. Such abstracts shall be enclosed in strong envelopes, closely sealed, which shall in no case be opened until the day fixed for the counting of such votes as hereinafter provided, and the said envelopes shall be indorsed by the clerk:

"Returns of an election held in the county of _____, on the _____ day of _____, A. D. 19 ____, for the offices of _____, etc."

Section 11466 provides as follows:

"Within fifty days after such general election, and as much sooner as all the returns

November 27, 1946

shall have been made, the secretary of state, in the presence of the governor, shall proceed to open the returns and cast up the votes given for all candidates for any office, except governor, lieutenant-governor, secretary of state, state auditor, state treasurer, attorney-general, railroad and warehouse commissioners and superintendent of public schools, and shall give to the persons having the highest number of votes for members of congress, from each district, certificates of their election, under his hand, with the seal of the state affixed thereto, and shall certify to the governor the names of the candidates having received the highest number of votes for the offices of judges of the supreme court, circuit courts and St. Louis and Kansas City courts of appeals." (Underscoring ours)

We may take judicial notice of the fact that at the general election held November 5, 1946, none of the officers mentioned in Section 18, Article IV, supra, were elected because all of said offices were filled at the general election held in 1944, and said offices will not be voted on again until the general election in 1948 (Section 2, Article 5, Constitution of Missouri 1875; Section 17, Article IV, Constitution of Missouri 1945; Section 11458, R. S. Mo. 1939).

Therefore, the only offices, the votes for which must be canvassed by the secretary of state this year are members of congress, state senators and representatives and judges of the circuit courts. In canvassing these returns the question as asked in your request is, is the secretary of state required to appoint two disinterested judges of a court of record of the state who, together with the secretary of the state, shall constitute a board of state canvassers as provided for in Section 18, Article IV of the Constitution of Missouri 1945, supra.

Section 18, Article IV, of the Constitution is plain in its requirement that such procedure must be followed in canvassing the returns of an election for governor, lieutenant-governor, secretary of state, state auditor, state treasurer and attorney general, but mentions no other officers. It is a cardinal rule in construing a constitution that words are to be given their natural, obvious or ordinary meaning, (State ex rel. Kansas City v. Orear, 277 Mo. 303, 210 S. W. 392; 16 C.J.S. 57) and there is no occasion for construction,

if the language is plain and definite (State v. Thompson, 331 Mo. 321, 53 S. W. (2d) 273).

While the method of canvassing the votes of those officers specifically mentioned in Section 18, Article IV of the Constitution imposes a definite duty upon the canvassing officials mentioned therein and such provision is self-executing (16 C.J.S. 111) still as to those officers not mentioned in said constitutional provision, the Legislature possesses and may exercise all legislative power to enact statutes relating to the canvassing of the returns of the election of such officers, subject only to the limitations or prohibitions imposed by the constitution (State ex rel. Crutcher v. Koeln 332, Mo. 1299, 61 S. W. (2d) 750).

By Section 11466 R. S. Mo. 1939, supra the General Assembly has provided that the secretary of state in the presence of the governor shall open the returns and cast up the votes for all the candidates mentioned except those votes for the offices mentioned in Section 18, Article IV of the Constitution. Therefore, we believe it is apparent that the canvassing requirements set forth in Section 18, Article IV, do not in any way relate to the casting up of the returns of the elections for members of congress, state senators and representatives and judges of the circuit courts.

CONCLUSION

It is, therefore, the opinion of this department that the requirement, in Section 18, Article IV, of the Constitution of Missouri 1945 that the Secretary of State shall appoint two disinterested judges of a court of record of the state and the three shall constitute a board of state canvassers, does not apply to the canvassing by the secretary of state in the presence of the governor of the returns of the elections of members of congress, state senators and representatives and judges of the circuit courts.

Very truly yours

ARTHUR M. O'KEEFE
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

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