

(SUPPLEMENTAL OPINION)

ELECTIONS: Time for certifying Constitutional Convention nominees by the Secretary of State.

March 11, 1943.

3/15



Honorable Dwight H. Brown  
Secretary of State  
Jefferson City, Missouri

Dear Mr. Brown:

This will acknowledge receipt of your letter of March 10, 1943, in which you request an opinion of this office. This request, omitting caption and signature, reads as follows:

"Art. XV, Sec. 3 of the Constitution provides that I shall certify names of nominees for delegate to the constitutional convention 'not less than fifteen days before the election.' Sec. 11540 seems to permit an objector to a nomination to secure a court order 'before the date for the certification of the names of nominees by the secretary of state to the county clerk ....'

"These provisions make it necessary that I know exactly on what date and at what hour I am free to certify the nominees, if no court order has been served upon me.

"May I have your opinion, please."

Section 3 of Article XV, of the Constitution of Missouri, which deals partly with your problem, is a rather long provision and we will only cite that portion which applies to the question herein:

"\* \* \*, and such candidate shall be nominated in such manner as may be prescribed

by the senatorial committee of the respective parties, and a certificate of nomination shall be filed in the office of the Secretary of State at least thirty days before such election, \* \* \* \*

The election for delegates to the Constitutional Convention is called for April 6, 1943, and under the provision just cited above this Department has rendered an opinion which holds that the last day for the certifying of the nominees to the Secretary of State was March 6, 1943, at midnight.

We next call your attention to Section 11540, R. S. Mo. 1939, which, like the Constitutional provision cited above, is a long provision and we will again cite only that part which applies to the question which you have asked. The pertinent part of such section provides as follows:

"All certificates of nomination which are in apparent conformity with the provisions of Sections 11539 and 11540, shall be deemed to be valid unless objection thereto shall be duly made, in writing, within three days after the filing of the same. In case such objection is made, notice thereof shall forthwith be mailed to all candidates who may be affected thereby, addressed to them at their respective places of residence as given in the certificate of nomination \* \* \* \* \*  
The secretary of state or the county clerk, as the case may be, with whom the original certificate was filed, shall in the first instance pass upon the validity of such objection and his decision shall be final, unless an order shall be made in the matter by the supreme court, or a circuit court, or by a judge of such court in vacation, before the date for the certification of the names of the nominees by the secretary of state to the county clerk \* \* \* \* \*"

March 11, 1943

Applying such section to the question which you have asked, we find that all objections to the certificates of nomination were limited to March 9, 1943, at midnight. After that time, under the provisions of Section 11540, supra, it would be impossible to file objections to any certificates of nomination of the delegates to the Constitutional Convention.

Therefore, it is the opinion of this Department that in all cases where there have been no objections filed to the certificates of nomination of the delegates to the Constitutional Convention, the Secretary of State was permitted, beginning March 10, 1943, to certify any such names to the various county clerks as nominees for this election. In those cases where objections have been filed and ruled on by the Secretary of State and a court order has not been made directing the Secretary of State to not certify any name of a delegate, the Secretary of State is empowered to certify such names to the various county clerks. The only names which he is not permitted to certify to the county clerks are those in which the court has made an order that such names shall not be certified.

Respectfully submitted,

JOHN S. PHILLIPS  
Assistant Attorney-General

APPROVED:

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ROY MCKITTRICK  
Attorney-General

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