

CORONERS: Election for coroner in 1942 unauthorized and void, and commission should not issue.

December 10, 1942



Mr. Richard Arens  
Secretary to the Governor  
Executive Office  
Jefferson City, Missouri

Dear Sir:

We acknowledge receipt of your request of December 8, 1942, for an opinion upon the following question:

"Should the Governor issue a Commission to one who was on the 3rd day of November, 1942 elected coroner of a county in Missouri?"

Section 10 of Article IX of the Constitution of Missouri provides as follows:

"There shall be elected by the qualified voters in each county on the first Tuesday next following the first Monday in November, A. D. 1908, and thereafter every four years, a sheriff and coroner. They shall serve for four years and until their successors be duly elected and qualified, unless sooner removed for malfeasance in office. Before entering on the duties of their office, they shall give security in the amount and in such manner as shall be prescribed by law, and shall be eligible only four years in any one period. Whenever a county

shall be hereafter established, the Governor shall appoint a sheriff and coroner therein, who shall continue in office until the next succeeding general election and until their successors shall be duly elected and qualified."

Section 11 of said Article IX, in so far as it applies to coroners, provides as follows:

"Whenever a vacancy shall happen in the office of sheriff or coroner, the same shall be filled by the county court. \* \* \* If any vacancy happen in the office of coroner, the same shall be filled for the remainder of the term by such county court. No person elected or appointed to fill a vacancy in either of said offices shall thereby be rendered ineligible for the next succeeding term."

While Section 11459, R. S. Mo. 1939, provides for the election of certain officials, including coroners, in the year of 1880, and every two years thereafter, its terms with reference to coroners are now ineffective, due to the adoption of Section 10 of Article IX of the Constitution long after the enactment of the statute. *Marsh v. Bartlett*, 121 S. W. (2d) 739, 1. c. 745, 234 Mo. 526.

The Constitution (Section 10 of Article IX) provides for the election of coroners in the general election of 1908 and every four years thereafter. This provision is definite and prevents any construction other than that coroners should have been elected at the general election in 1940, and will be again elected in 1944.

Under the clear provisions of Section 11 of Article IX of the Constitution, any vacancy occurring in the office of coroner is filled for the remainder of the four year

term by county court appointment. It is apparent, therefore, that these two constitutional provisions preclude the holding of an election for coroner in the year of 1942.

In 29 C. J. S., page 101, the following rule is announced:

"Time and place are of the substance of an election, and it is essential to the validity thereof that it be held at the time and place provided by law."

"Time and place are of the substance of every election, and as a rule it is essential to the validity of an election that it be held at the time and in the place provided by law, and, if it is not so held, the eligibility of the candidates voted for will not help the matter.\* \* \*"

18 Am. Jur., page 250, states:

"In most jurisdictions constitutional provisions, of which the courts may take judicial notice, fix the times of the election of various officers. Although such a provision should be adhered to, it does not preclude the legislature from fixing the time of elections not mentioned therein.

"The prevailing view seems to be that where the date of an election is not left to the determination of officials, but is unequivocally fixed by statute, the provision is regarded as mandatory and the election officials have no authority to change the date. An election held at a time other than that prescribed will be declared void, \* \* \*".

The St. Louis Court of Appeals in State *ex rel.* v. Ruark, 34 Mo. App. 325, and the Kansas City Court of Appeals in State v. Webb, 49 Mo. App. 407, l. c. 412, ruled that an election held on an unauthorized date was void.

CONCLUSION

It is, therefore, the opinion of this department that an election for coroner held on November 3, 1942, is unauthorized and void, and that a commission should not issue to the one receiving the highest number of votes at such election.

Respectfully submitted

VANE C. THURLO  
Assistant Attorney General

APPROVED:

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ROY McKITTRICK  
Attorney General  
VCT:HR