

OFFICERS: Governor shall commission all officers duly elected under
GOVERNOR: the new charter of St. Louis County *including county
supervisor and councilmen.*

December 15, 1950



Honorable Walter H. Toberman
Secretary of State
Jefferson City, Missouri

Attention: Mr. J. Paul Markway, Chief Clerk

Dear Sir:

This will acknowledge receipt of your request for an official opinion which reads:

"The Chief Clerk of the Board of Election Commissioners of St. Louis County in certifying the names of the county officers-elect has included the names of the county supervisor and seven councilmen. Since St. Louis County has adopted a new charter, and we are unable to find in the election laws anything covering this, we would like your opinion as to whether or not commissions should be issued by the State for the officers mentioned above.

"If you can give us this opinion at once, it will be considered as a great favor, as we are anxious to get all commissions issued by the 20th of this month."

The duly appointed Charter Commission of St. Louis County submitted a proposed charter for said county and same was submitted to the qualified electors of said county at a special election held on Tuesday, March 28, 1950. By their vote they adopted said charter, a certified copy of which has been filed with the Secretary of State.

The courts have held that the rules of construction applicable to statutes likewise apply to the construction of the Constitution. *McGrew v. Mo. Pac. Rr. Co.*, 132 S.W. 1076. Another well established rule of statutory construction is that all laws dealing with the same subject matter must be construed together and harmonized if possible. See *Johnson v. Kruckemeyer*, 29 S.W. (2d) 730, 224 Mo. App. 351; also *State ex rel. Cairo Bridge Co. v. Mitchell*, 181 S.W. (2d) 496, 352 Mo. 1136.

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Section 3, Article II of said charter provides for the election of a county council and county supervisor, and reads:

"Section 3. The following County Officers shall be elected: Assessor, Circuit Clerk, Collector, four Constables, Coroner, seven Councilmen, County Clerk, heretofore known as the Clerk of the County Court, County Supervisor, Highway Engineer, Prosecuting Attorney, Public Administrator, Recorder of Deeds, Sheriff, Superintendent of Schools, and Treasurer."

Section 5, Article IV of the Constitution of Missouri, 1945, requires the Governor to commission all officers unless otherwise provided by law, and reads:

"The governor shall commission all officers unless otherwise provided by law. All commissions shall be issued in the name of the state, signed by the governor, sealed with the Great Seal of the state and attested by the secretary of state."

The foregoing constitutional provision follows Section 23, Article V, Constitution of Missouri, 1875.

Furthermore, Section 4 of said charter provides that the officers named in Section 3, supra, shall be nominated and elected in the manner provided by law for state and county officers, and each of said officers shall have all the power and perform all the duties provided by law, except as otherwise provided by this charter. Section 4 reads:

"Section 4. The above named elective County Officers shall except the Superintendent of Schools be nominated and elected for a term of four years in the manner provided for State and County Officers. The Superintendent of Schools shall be elected in the manner provided by law. Each shall have all the powers and perform all the duties provided by law, except as otherwise provided by this Charter."

We have searched the statutes to find some legislative authority contrary to the foregoing constitutional provision or implementing said provision and fail to find wherein the Legislature has enacted such a law. Therefore, in the absence of any such legislation, it is apparent that the foregoing

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constitutional provision makes it mandatory upon the Governor to issue commissions to the newly elected members of the county council and the county supervisor under the new charter of St. Louis County.

In State ex rel. Attorney General v. Pool, 41 Mo. 32, l.c. 36, 37, the court held that the Legislature was vested with authority to declare what requisites are necessary to clothe an officer with authority and induct him into office without the necessity of a commission. However, the court further held that until such an act is passed for that purpose, the constitutional injunction seems to be imperative. Furthermore, in State ex rel. v. Vail, 53 Mo. 97, the court held that the Governor has no power to inquire judicially into the qualifications of any candidate. Also, in State ex rel. v. Steers, 44 Mo. 223, the court held that an official derives his title to an office by election and not by the commission and if he is not legally elected, he may be ousted notwithstanding his commission.

In view of the foregoing, in order to give meaning to all provisions, a sensible construction would be to hold that the Governor shall commission all the duly elected officers under the Charter of St. Louis County.

CONCLUSION

Therefore, in the absence of any legislation conflicting with Section 5, Article IV, supra, authorizing the Governor to commission all officers, it is the opinion of this department that the Governor is required to commission the duly elected members of the county council and county supervisor of St. Louis County, Missouri.

Respectfully submitted,

AUBREY R. HAMMETT, JR.
Assistant Attorney General

APPROVED:

CBB
J. E. TAYLOR
Attorney General

ARH:VLM