

VOTING MACHINES: It is the opinion of this office that the proposition of the retention in office of certain judges under Article V, Section 29(c) (1) of the 1945 Missouri Constitution can be properly submitted to the voters of this State on voting machines.

October 6, 1958



Michael L. Galli, Chairman
Board of Election Commissioners
for the City of St. Louis
208 South Twelfth Boulevard (2)
St. Louis, Missouri

Dear Mr. Galli:

This is in answer to your opinion request to this office dated September 26, 1958, which reads as follows:

"The Secretary of State's certified form of Judicial Ballot to be voted on November 4, 1958, shows the following instruction to voter:

Submitting to the voters whether the Judges named below, whose terms expire December 31, 1958, shall be retained in their offices for new terms. **VOTE ON EACH JUDGE.** To vote YES, scratch NO. To vote NO, scratch YES.

and below the ^{YES} opposite each Judges' name are the words, ^{NO} in parenthesis, (scratch one).

"As we are using voting machines it is impossible for the voter to scratch and we therefore ask for an opinion where voting machines are used, can the voter vote to retain the Judges in office by pulling the lever of the machine so as to place an "X" mark in the square opposite the word YES, and vote no by placing an "X" mark in the square opposite the word NO."

Article V, Section 29(c) (1) of the 1945 Missouri Constitution provides as follows:

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FORM OF JUDICIAL BALLOT--REJECTION AND RETENTION.**

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"of such office, and at the expiration of each such term shall be eligible for retention in office by election in the manner here prescribed."

As can be seen, this provision requires that a separate judicial ballot without party designation be used in submitting to the voters the proposition of retaining certain judges in office. It is our opinion that the object of this constitutional provision is threefold.

The object of submitting the proposition on a separate judicial ballot is to call the attention of each and every voter directly and specifically to the specific question submitted to him and to put it before him so that there could be no chance for him to confuse it with any other matter submitted at the election. The use of a separate ballot makes the voting on the proposition to retain a certain judge in office an election separate and distinct from any other election held at the same time and place.

The object of submitting the proposition on a ballot is to insure secrecy to the voter in expressing his choice on the proposition.

The object of submitting the proposition on a ballot without party designation is to withdraw candidates for judicial offices from partisan politics.

Keeping in mind these three objects of the above constitutional provision, the question now is whether the said constitutional provision and the objects thereof will be complied with if the proposition of retaining certain judges in office is submitted to the voters on a voting machine.

The framers of the 1945 Missouri Constitution provided for the use of voting machines in Missouri elections when they provided in Article VIII, Section 3, as follows:

"All elections by the people shall be by ballot or by any mechanical method prescribed by law. * * *"

The Missouri legislature in following up this constitutional provision enacted Chapter 121, Cum. Supp. 1957, during the year 1953. This legislation provides for the use of voting machines in Missouri elections.

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In applying the use of voting machines to the objects of Article V, Section 29(c) (1) of the Constitution, it is our opinion that the proposition of retaining certain judges in office can be submitted to the voters on a voting machine separate and apart from any other propositions submitted at the same time and place. It is our opinion that the proposition on a voting machine would call the voter's attention to that proposition as directly and specifically as would the submission of the proposition on a separate paper ballot.

As to the second object, it is our opinion that the submission of the proposition to the voters on a voting machine will insure the same secrecy to the voter that he would have in using a separate paper ballot. It is our opinion that the word ballot as used in Article V, Section 29(c) (1) is not used in the literal sense but merely by way of designating a method of conducting elections that will guarantee the secrecy of the choice of the voter. We believe the word "ballot" is used generally to describe any system of voting which insures secrecy to the voter in recording his choice, rather than specifically to describe any peculiar or particular method of accomplishing that result. We do not believe the framers of the constitution meant that the word "ballot" be so interpreted as to defeat the objects of the other provisions of the constitution, namely, Article VIII, Section 3. It is our opinion that voting by means of a voting machine is voting by ballot.

As to the third object of Article V, Section 29(c) (1), it is our opinion that the proposition can be submitted to the voters on voting machines without party designation in connection therewith.

CONCLUSION

It is the opinion of this office that the proposition of the retention in office of certain judges under Article V, Section 29 (c) (1) of the 1945 Missouri Constitution can be properly submitted to the voters of this State on voting machines.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Richard W. Dahms.

Yours very truly,

John M. Dalton
Attorney General

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