

August 18, 1971

OPINION LETTER NO. 399
Answer by Letter - Burns

Honorable James C. Kirkpatrick
Secretary of State
State Capitol Building
Jefferson City, Missouri 65101



Dear Mr. Kirkpatrick:

This is in answer to your letter of recent date in which you inquire whether the ballot form prescribed by Section 111.361 or Section 125.050, RSMo 1969, shall be followed when proposed constitutional amendments are submitted to the voters for approval or rejection. You specifically ask whether there shall appear beside or below the official ballot title of each proposed constitutional amendment the words "YES" and "NO" with boxes following such words, or the words "For" and "Against" with boxes to the left of such words.

Section 111.361, RSMo 1969, provides as follows:

"When the secretary of state has certified to each county clerk or board of election commissioners a proposition or question to be submitted to a vote of the people, ballots shall be prepared and distributed on which the proposition or question shall be printed, and beside or immediately below the proposition or question shall be printed a 'YES' and a 'NO' followed by a square whose sides shall be not less than one-fourth inch in length. Beneath the entire question and the 'YES' and 'NO' and their respective boxes, there shall be printed instructions as follows: 'If you are in favor of this proposition (or question), place an X in the box opposite "YES". If you are opposed to this proposition (or question), place an X in the box opposite "NO".'

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The secretary of state shall specify the exact wording of the instructions in his certification of the proposition or question, and all ballots which are used at the election shall be printed only in accordance with this section."

Section 125.050, RSMo 1969, provides in part as follows:

"The vote on a proposition to call a constitutional convention or on the adoption of a new constitution, or on any proposed constitutional amendment, shall be taken by ballot. . . . If but one constitutional amendment has been proposed by the general assembly or by the initiative, each official constitutional ballot shall have printed thereon the words 'Constitutional Amendment No. 1' followed by the official ballot title as provided for in this chapter, and to the left of the official ballot title, the words 'For' and 'Against' one above the other. But if more than one constitutional amendment has been so proposed, then each ballot shall have printed thereon the words 'Constitutional Amendment No. 1', and so on, setting out the official ballot title of each proposed amendment thereunder and to the left of the official ballot title the words 'For' and 'Against' one above the other, designating in numerical order each proposed constitutional amendment as arranged by the secretary of state. The official ballot title shall be printed with the number of the proposed constitutional amendment on the official ballot and the words 'For' and 'Against' in bold blackfaced type in capital letters not less than eight point in size nor more than ten point in size. At the left of the word 'For' and the word 'Against' shall be placed a small square, not less than one-fourth of an inch in length. . . . To vote for any proposed constitutional amendment, propositions, other subjects, measures, including referendum and initiative measures, if any are submitted, the voter shall place an X in the square opposite the word 'For' and if he is opposed to the same, the voter shall place an X in the square opposite the word 'Against'. . . ."

It can be seen that under provisions of Section 111.361, the ballot is to contain at the side or immediately below the proposition or question certified to each county clerk or board of

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election commissioners by the Secretary of State the words "YES" and "NO" and that such words each shall be followed by a square in which an X mark can be made.

Section 125.050, provides that when a constitutional amendment or constitutional amendments are to be submitted by a ballot the ballot is to contain titles for the various constitutional amendments submitted and that to the left of such ballot titles shall appear the words "For" and "Against" and that at the left of the word "For" and at the left of the word "Against" there shall be placed a square box in which a mark can be made so that the electorate can vote to adopt or reject such constitutional amendments.

The question to be decided is which statute shall be followed when constitutional amendments are submitted for approval or rejection by the voters; that is whether the words "YES" and "NO" or "For" and "Against" are to appear on the ballot so that the voters may vote to approve or reject such constitutional amendments.

We believe that the rule to be applied here is that found in the case of State ex rel. v. Carolene Products Co., 144 S.W.2d 153, decided by the Supreme Court of Missouri, in Banc. In that case the Court quoted with approval from the case of State ex rel. v. Fulks, 247 S.W. 129. The Court said at l.c. 156:

"Where there is one statute dealing with a subject in general and comprehensive terms and another dealing with a part of the same subject in a more minute and definite way, the two should be read together and harmonized, if possible, with a view to giving effect to a consistent legislative policy; but to the extent of any necessary repugnancy between them the special will prevail over the general statute. Where the special statute is later, it will be regarded as an exception to, or qualification of the prior general one; and where the general act is later, the special will be construed as remaining an exception to its terms, unless it is repealed in express words or by necessary implication.' . . ."

It is our view that while the provisions of Sections 111.361 and 125.050, are to be read together and harmonized if possible, to the extent of any repugnancy between them, Section 125.050, insofar as constitutional amendments are concerned is a special statute which deals with such subject in a minute and definite way and prevails over any contrary provisions in Section 111.361.

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In our view Section 125.050 controls insofar as constitutional amendments are concerned and therefore the constitutional ballot containing the proposed constitutional amendments should have to the left of the official ballot title for each proposed constitutional amendment the words "For" and "Against" in bold blackfaced type in capital letters not less than eight point or more than ten point in size.

Very truly yours,

JOHN C. DANFORTH
Attorney General