

ELECTIONS: The official judicial ballot shall be published by the clerks of the county courts of each county in the State of Missouri.

September 10, 1942.

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

Dear Senator Brown:

The Attorney-General wishes to acknowledge receipt of your letter of September 8, 1942, relative to the advertising of the judicial ballot. Your letter, omitting caption and signature, is as follows:

"Referring to telephone conversation Saturday morning:

"Question has been raised concerning how the judicial ballot is to be advertised.

"The amendment to Art. VI of the Constitution of Missouri, adopted Nov. 5, 1940, provides that until legislation is enacted, the judicial ballots shall be prepared, printed, published and distributed, and the election upon the question of retention of such judge in office shall be conducted and the votes counted, canvassed, returned, certified and proclaimed by such public officials in such manner as is now provided by the statutory law governing voting upon measures proposed by the initiative."

"The voters are informed of matters proposed by the initiative, in advance of the general election, by means of newspaper advertising which the Secretary of State is directed to publish in newspapers in every county.

"May I be favored with your opinion whether I should include the judicial ballot as provided in the constitutional amendment of Nov. 5, 1940 to Art. VI of the Constitution, in the proposed constitutional amendments advertisement?"

In order to arrive at a conclusion on this matter we will first cite you to Amendment No. 3, Section 3, page 724, of the Session Acts of 1941. In view of the fact that this section is rather lengthy, only that part pertinent to the current question will be quoted, that is, as follows:

"Whenever a declaration of candidacy for election to succeed himself is filed by any judge under the provisions of this section, the Secretary of State shall not less than thirty (30) days before the election certify the name of said judge and the official title of his office to the clerks of the county courts, and to the boards of election commissioners in counties or cities having such boards, or to such other officials as may hereafter be provided by law, of all counties and cities wherein the question of retention of such judge in office is to be submitted to the voters, and, until legislation shall be expressly provided otherwise therefor, the judicial ballots required by this section shall be prepared, printed, published and distributed, and the election upon the question of retention of such judge in office shall be conducted and the votes counted, canvassed, returned, certified and proclaimed by such public officials in such manner as is now provided by the statutory law governing voting upon measures proposed by the initiative."

As can be seen from a reading of the constitutional amendment quoted above, the judicial ballot shall be prepared, printed,

published and distributed as is now provided by the statutory law governing voting on measures proposed by the initiative. Therefore, we should look into such laws to see if any provision is made for the publication of these ballots.

After a careful reading of the entire chapter referring to "Initiative and referendum" (which is Chapter 77, R. S. Mo. 1939), we fail to find any specific provision which will help us in determining who shall publish the proposed judicial ballot. In view of that fact, we must refer to Article 9, Chapter 76 of the Revised Statutes of Missouri for 1939, which refers to "constitutional amendments." See State ex rel. v. Westhues, 9 S. W. (2d) 612, 1. c. 617.

We will next cite you to Section 11676, R. S. Mo., 1939, which prescribes the following:

"Whenever a proposed constitutional amendment or other question is to be submitted to the people of the state for popular vote, the secretary of state shall duly, and not less than twenty days before the election, certify the same to the clerk of each county court of the state, and the clerk of each county court shall include the same in the publication provided in section 11542."

As can be seen from reading the above section, we find the following phrase, to-wit, "Whenever a proposed constitutional amendment or other question is to be submitted to the people of the state * * *." We are of the opinion that the underlined portion of the preceding sentence brings the present question of the publication of the judicial ballot within the provisions of this chapter. Further quoting Section 11676, cited above, we find the following:

"The Secretary of State shall duly, and not less than twenty days before the election, certify the same to the clerk of each county court of the state, and the clerk of each county court shall include the same in the publication provided in Section 11542."

In other words, the publication of the judicial ballots seems to be governed by two sections, namely, Section 11676, R. S. Mo. 1939, and also Section 11542, R. S. Mo. 1939, which is referred to in the former section. Therefore, we wish to cite you to Section 11542, R. S. Mo. 1939, which reads as follows:

"At least seven days before an election to fill any public office, the clerk of the county court of each county shall cause to be published in two newspapers representing each of the two major political parties, if such there be, and if not, then in two newspapers, or if there be only one newspaper published within the county then in such newspaper, the nominations to office certified to him by the secretary of state, and also those filed in his office. He shall make two such publications in each of such newspapers before the election, one of which publications in each newspaper shall be upon the last day upon which such newspaper is issued before the election: Provided, that no higher rates shall be paid per inch, than is provided by section 14966, chapter 119, R. S. 1939, as amended."

Under the provisions of the two sections cited immediately above, we believe it is the duty of the county clerk to publish the official judicial ballot. In the case of constitutional amendments proposed by the General Assembly, Article XV, Section 2, of the Constitution of Missouri, provides that a publication of such amendment shall be made once a week for four consecutive weeks next preceding such election in at least one newspaper in each county of the state where a newspaper is published. We believe that such a provision of the Constitution was enacted in order that the people in the State of Missouri would be informed as to the full content of the amendments for which they are to cast their ballots. In fact, no other provision of the Constitution or of the statute provides for the publication of the entire text of the constitutional amendments proposed by the General Assembly.

In State v. Westhues, 9 S. W. (2d) 612 (Mo. Sup.), the court held that in the publication of amendments proposed by the initiative such publications should be made in the same manner as is provided by statutes for the publications of amendments proposed by the General Assembly of the State of Missouri. However, we do not feel that the judicial ballot should be published in the same manner as the constitutional amendments by the Secretary of State in view of the fact that the official judicial ballot if published by the Secretary of State would be practically identical to that which is published by the clerk of the county court of each county. In fact, the publication by the Secretary of State would contain the names of judges for certain courts which would not be voted on except by the local electors in the district for which the judge is to be elected. In other words, it would be mere surplusage for the Secretary of State to publish such judicial ballot when Sections 11676 and 11542 of the Revised Statutes of Missouri for 1939, specifically provide that such ballots are to be published by the clerk of the county court in each county.

Section 12290, R. S. Mo. 1939, which is a statutory enactment under the initiative and referendum, provides that when any measure shall be filed with the Secretary of State to be referred to the people thereof by the referendum petition and when any measure shall be proposed by the initiative petition, the Secretary of State shall forthwith transmit to the Attorney-General of the State a copy thereof and within ten days thereafter the Attorney-General shall provide and return to the Secretary of State a ballot title for such measure. We are of the opinion that under this particular section the Secretary of State shall request the Attorney-General's department of this State for a ballot title for the judicial ballot in question. It then becomes the duty of the Attorney-General to furnish such ballot title and return same to the Secretary of State. After receipt of such ballot title from the Attorney-General the Secretary of State shall then certify same to the clerk of the county court of each county and such clerk shall then proceed as provided by Sections 11676 and 11542, R. S. Mo. 1939.

Conclusion

It is therefore the opinion of this Department that the Secretary of State should not include the judicial ballot

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as provided for in the Constitutional Amendment of November 5, 1940, to Article VI of the Constitution in the proposed Constitutional Amendment advertisement since the publication of such judicial ballots shall be made by the county clerk of each county of this State as provided by Sections 11676 and 11542, R. S. Mo. 1939.

Respectfully submitted,

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APPROVED:

ROY MCKITTRICK
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