

ELECTIONS: Judicial ballot title;
Constitutional Convention ballot title

September 14, 1942.

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

Dear Mr. Brown:

The Attorney-General wishes to acknowledge receipt of your letter of September 11th requesting an opinion. This request, omitting caption and signature, is as follows:

"Thank you for your ruling of September 10th, to the effect that the judicial ballot will not be advertised with the complete text of the constitutional amendments, but will be advertised by the county clerks along with the blanket ballot, constitutional amendment ballot titles, and 'shall there be a constitutional convention' question.

"I am attaching hereto a typewritten copy of the proposed judicial ballot. Of course, I shall certify only the two supreme judges in 113 counties, and will add the circuit and probate judges at Kansas City and Independence to the Jackson County certificate, and will add circuit and probate judges to the St. Louis City certificate. Will you please provide a ballot title for use by county clerks and boards of election commissioners in advertising the judicial ballot?



"Also please find attached one of the 'Shall there be a convention' ballots, used in special election a little over twenty years ago. I don't know whether the law required or permitted the subheading, 'Proposition No. 1'. Will you please give me a ballot title for use by county clerks and boards of election commissioners in advertising this question, and also rule as to the inclusion of the subheading, 'Proposition No. 1.'"

Your first request, as shown above, is that this Department provide a ballot title for use by county clerks and boards of election commissioners in advertising the judicial ballot. We hereby submit the following as a ballot title for the judicial ballot:

JUDICIAL BALLOT

Submitting to the qualified voters whether the Judges hereinafter named whose terms expire December 31, 1942, shall be retained in office.

You further request that we furnish you an opinion on the proposition set out above in paragraph three of your letter.

In answering this proposition we will first cite you to Article XV, Section 4, of the Constitution of Missouri, which provides as follows:

"The question 'Shall there be a convention to revise and amend the Constitution?' shall be submitted to the electors of the state at a special election to be held on the first Tuesday in August, one thousand nine hundred and twenty-one, and at each general election next ensuing the lapse

of twenty successive years since the last previous submission thereof, and in case a majority of the electors voting for and against the calling of a convention shall vote for a convention, the governor shall issue writs of election to the sheriffs of the different counties, ordering the election of delegates, and the assembling of such convention, as is provided in the preceding section."

We would then like to cite you to Article XV, Section 3 of the Constitution of Missouri, which directs the following:

"The general assembly may at any time authorize by law that a vote of the electors of the state be taken upon the question, 'Shall there be a convention to revise and amend the Constitution?' which shall be submitted to the electors on a separate ballot without party designation of any kind, at either a special or general election, as the general assembly may provide, and if a majority of the electors voting for and against the calling of a convention shall vote for a convention, the governor shall issue writs of election to the sheriffs of the different counties, ordering the election of delegates to the convention, on a day not less than three nor more than six months after that on which said question shall have been voted on. The electors of each senatorial district of the state, as then organized, shall elect two delegates as herein provided at such election, and the electors of the state voting at the same election shall elect fifteen delegates-at-large, such election to be conducted as provided by law; and each delegate shall possess the qualifications of a senator; and no person holding any other office of trust or profit

(national guard officers, school directors, justice of the peace and notaries public excepted) shall be eligible to be elected a delegate to the convention nor during the term for which he shall have been elected or appointed. In order to secure representation from different political parties in each senatorial district, each political party as then authorized by law to make nominations for the office of state senator in each senatorial district shall nominate only one candidate for delegate from such senatorial district, and such candidate shall be nominated in such manner as may be prescribed by the senatorial committee of the respective parties, and a certificate of nomination shall be filed in the office of the secretary of state at least thirty days before such election, and such candidate shall be voted for, each on a separate ballot with emblem or party designation, and each elector shall have the right to vote for one of such candidates, and the two candidates receiving the highest number of votes in each senatorial district shall be elected; and all candidates for delegates-at-large shall be nominated by nominating petitions only, which shall be filed in the office of the secretary of state at least thirty days before any such election and shall be verified in the same manner as may be provided by law for initiative petitions, and until otherwise provided by law such petitions shall be signed by electors of the state, equal in number to at least five per centum of the entire vote cast for governor at the last general election in the senatorial district in which such candidates reside; and all candidates for delegates-at large shall be voted for upon one independent and separate ballot without any

emblem or party designation whatever, and the fifteen candidates for delegates-at-large receiving the highest number of votes shall be elected. Not less than fifteen days before the election, the secretary of state shall certify to the county clerk of the county the name of each person nominated for the office of delegate from the senatorial district in which the county, or any part of it, is included, and the names of all persons nominated for delegates-at-large. The delegates so elected shall be convened by proclamation by the governor within six months after their election at the seat of government. Upon the convening of the convention all delegates shall take an oath or affirmation to support the Constitution of the United States and of the state of Missouri, and to faithfully discharge their duties as delegates of the convention, and shall receive for their services the sum of ten dollars per diem and mileage as provided by law for members of the general assembly. A majority of the delegates of the convention shall constitute a quorum for the transaction of business, and no Constitution or amendment to this Constitution shall be submitted for approval or rejection to the electors of the state as herein provided, unless by the assent of a majority of all the delegates elected to the convention, the yeas and nays being entered on the journal to be kept. The convention shall have power to appoint such officers, employees and assistants as it may deem necessary, and fix their compensation, and to provide for the printing of its documents, journals, proceedings and a record of its debates, and to appropriate money to pay for the expenditures incurred. The sessions of the convention shall be held with open doors, it shall determine the rules of its own proceedings, choose its own officers, and be the

judge of the election, returns and qualifications of its delegates. In case of a vacancy, by death, resignation or other cause, of any delegate elected to the convention, such vacancy shall be filled by the governor by the appointment of another delegate from the same political party to which the delegate causing the vacancy belonged. Any proposed Constitution or constitutional amendments which shall have been adopted by such convention shall be submitted to a vote of the electors of the state in such manner and containing such separate and alternative propositions and on such official ballot as may be provided by such convention, at a special election, on a day to be therein fixed, not less than sixty days nor more than six months after the adjournment of the convention. Upon the approval of such Constitution or constitutional amendments in the manner provided in the last preceding section such Constitution or constitutional amendments shall go into force and effect at the end of thirty days after such election. The result of such election shall be made known by proclamation by the governor."

As can be seen from reading the above two sections of the Constitution, such Constitution provides that the question, "Shall there be a convention to revise and amend the Constitution?" shall be submitted to the electors of the State of Missouri at least once every twenty years and that there must be a lapse of twenty years between the successive submissions of such question.

We further wish to cite you to Section 11680, R. S. No. 1939, which section is 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 a proposition to call a constitutional convention is submitted, each ballot shall have printed

thereon the words 'CONSTITUTIONAL CONVENTION,' with 'YES' and 'NO' to the right thereof, one above the other. If the adoption of a new constitution is submitted, each ballot shall have printed thereon the words 'NEW CONSTITUTION,' with 'YES' and 'NO' to the right thereof, one above the other. If but one constitutional amendment has been proposed, each official constitutional ballot shall have printed thereon the words 'CONSTITUTIONAL AMENDMENT NO. I' followed by the official ballot title as provided for in this article, and to the right thereof at right angles with the length of the ballot, the words 'YES' and 'NO' one above the other. But if more than one constitutional amendment has been proposed, then each ballot shall have printed thereon the words 'CONSTITUTIONAL AMENDMENT NO. I,' and so on, setting out the official title of each proposed amendment thereunder and to the right thereof at right angles with the length of the ballot the words 'YES' and 'NO,' 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 'YES' and 'NO' in bold, black-faced type. The secretary of state shall certify to the different county clerks or other proper officers the form of the official constitutional ballot, containing the numerical numbers and the official ballot title of all proposed constitutional amendments, as provided for in this article, which shall be printed upon a separate official ballot to be designated 'CONSTITUTIONAL BALLOT.' Ballots not printed or prepared as herein required shall not be counted on the proposition thereby submitted. The constitutional ballot shall not be less than four inches wide and ten

inches long, of the same kind of paper, color and of equal size. Every other proposition to be submitted at the general election shall be proposed and submitted on the 'constitutional ballot,' as herein provided, if any proposed constitutional amendments are submitted at such election or not. The clerk of the county court of each county shall provide for each district in his county, and the election commissioners for each election district in their city, a separate ballot box for the deposit and reception of the constitutional ballots. To vote for or against proposed constitutional amendments, or other subjects, if any are submitted, the voter shall erase or strike out the word 'NO' if he is in favor of the particular proposed constitutional amendment or proposition, and the word 'YES' if he is opposed to the same. In all other respects the law governing the printing, distribution of ballots, the number to be distributed, and the manner of voting ballots at a general election shall apply to 'constitutional ballots' where not in conflict with this article."

As can be seen from this section of the statute, constitutional amendments which are to be referred to the people are to be numbered. It seems clear also that the Legislature intended that the question on the holding of a constitutional convention is also to be numbered. This section provides the manner in which constitutional amendments shall be numbered but we cannot consider the question of voting on the advisability of a constitutional convention "a constitutional amendment." In view of that fact we feel that it should be designated other than "a constitutional amendment," although we feel it should clearly be numbered. Therefore, the term "Proposition No. 1" would be entirely appropriate and since we believe the intention was for each question to be numbered we think that such designation is permitted and in fact required by the statute.

Therefore, it is the conclusion of this Department that the sub-heading "Proposition No. 1" on a ballot for the

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determination of the holding of a constitutional convention, is permitted and required by law.

You further request that we furnish you a ballot title for the proposition involving a constitutional convention. In both Section 3 and 4 of Article XV of the Constitution of Missouri, we find reference to a certain question. Such question is, "Shall there be a convention to revise and amend the Constitution?" In view of the fact that that is the question that is to be considered, it is our opinion that the phrase referred to above would make a sufficient ballot title if we add at the end of the phrase the following words, "of the State of Missouri." Therefore, we submit to you the following ballot title for the question concerning a constitutional convention:

Shall there be a convention to revise
and amend the Constitution of the
State of Missouri?

Respectfully submitted,

JOHN S. PHILLIPS
Assistant Attorney-General

APPROVED:

ROY MCKITTRICK
Attorney-General

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