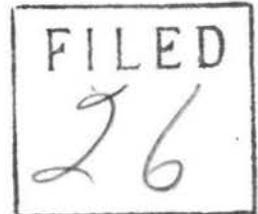


ELECTION: Precincts cannot be consolidated nor canvass lists omitted in Kansas City for Special Constitutional Election on February 27, 1945.

January 12, 1945

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J. E. Taylor
Attorney General



Board of Election Commissioners
County Courthouse
Kansas City (6), Missouri

Gentlemen:

This will acknowledge receipt of your letter of recent date, followed by your telegram of the 11th, in which you request an opinion of this Department upon the following questions:

- (1) Can the Board of Election Commissioners consolidate two or more precincts at the Special Election to be held on February 27, 1945, at which election the proposed new Constitution of Missouri will be submitted to the electors of Missouri?
- (2) Can the Board of Election Commissioners of Kansas City dispense with a clerks' canvass and the printing of registration lists for the Special Election to be held on February 27, 1945, at which election the proposed new Constitution of Missouri will be submitted to the electors?

Section 3 of Article 15 of the Constitution of Missouri empowers a Constitutional Convention to determine the manner in which a proposed new Constitution shall be submitted to the electors. The Constitutional Convention of 1943 - 1944, exercised the aforesaid power by passing an ordinance entitled "Manner of Holding Election Submitting the Proposed Constitution of Missouri to the Electors and Fixing the Date of Said Election", as appears by the Journal of said Convention for September 29, 1944. One of the provisions of said ordinance reads as follows:

"Said election shall be held and said qualified electors shall vote at the usual places of voting at general elections in the several counties of the State, including the City of St. Louis * * *"

Said ordinance further provided that except as therein otherwise provided, said election should be conducted according to the laws in force on said date regulating general elections.

From the foregoing, it will be seen that the Constitutional Convention has ordained that the electors shall vote at the usual places of voting at general elections. This provision, we think, would preclude the consolidation of two or more precincts because if precincts were consolidated the electors could not vote at the usual places of voting at a general election.

We have not overlooked Section 12097 (a), page 543, Laws of 1943. However, even if said section governs an election where a whole new Constitution is submitted to the voters, as to which there might reasonably be some doubt, said section would not apply to the Special Election to be held February 27, 1945, for the reason that it was within the power and province of the Constitutional Convention to determine the manner in which the proposed new Constitution should be submitted. The power which said Convention had, was received directly from the Constitution of Missouri. The people committed directly to that Convention such power and therefore, if there is a conflict between the method which the Convention ordained and the method which the Legislature provided might be used, the action of the Constitutional Convention would prevail. The Legislature could not take away from the Constitutional Convention a power which had been given to it by the Constitution of Missouri.

Said ordinance of the Constitutional Convention further provided that at the Special Election to be held on February 27, 1945, "every person entitled to vote under the Constitution and laws of this State shall be entitled to vote at said election". As pointed out above, said ordinance also provided that the election should be conducted, except as therein expressly otherwise provided, according to the laws governing general elections at that time. Said ordinance further provided that in cities and counties where registration of voters is now provided for by law, said Special Election should be held in accordance with the provisions of law now in effect applicable to holding general elections in said cities and counties.

If the election is to be held according to the general election laws, then every step in that election should be held in accordance with such laws. In Kansas City, one step in an election is the registration of voters, as provided for by Article 23, Chapter 76, R.S. Mo. 1939, and the election cannot legally be held without first determining who is entitled to vote at such election. In order to make such determination, the law has provided that certain steps be taken by way of registration and listing of the qualified voters. One of those steps is provided by Section 12121, which provides for verifying the registration lists by a canvass of the registered voters.

Registration is a part of the holding of the election.

Under Section 12112, persons possessing certain qualifications are authorized to vote but only in the precincts where their names are registered, and whereof they are registered as residents. The registration lists must be in the hands of the judges of election on election day (Sections 12132, 12133, 12139) and no one shall vote whose name is not on those lists (Section 12141). Registration therefore, has been made an integral part of an election in Kansas City.

There is authority supporting our position that registration is a part of an election. In *Gragg vs. Dudley*, 289 Pac. 254, 257, 143 Ok. 281, it is said:

"Section 116, vol. 9, R.C.L. p. 1113, reads in part as follows: 'An election is a process which includes registration, nomination, the voting and the manner in which the votes are to be counted and the result made known. Each of these steps must be taken in pursuance of the law existing at the time the election is had. * * *'".

Likewise, in *Holden vs. Phillips*, 132 S.W. (2d) 419 (Tex. Civ. App.), the Court held that an election was not a single event but a process.

CONCLUSION.

It is, therefore, the opinion of this Department that at the Special Election to be held on February 27, 1945, at which a proposed new Constitution for Missouri will be submitted, (1) the Board of Election Commissioners of Kansas City, cannot consolidate two or more precincts for voting purposes, and that, (2) Said Board of Election Commissioners cannot dispense with the canvass for verification of registration lists provided for by Section 12121, R.S. Mo. 1939.

Respectfully submitted,

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APPROVED:

J. E. TAYLOR
Attorney General

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