

ELECTIONS: Primary election returns for elective state officers canvassed by board of state canvassers.

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Honorable Edgar C. Nelson
Secretary of State
Jefferson City, Missouri

Dear Mr. Nelson:

This department is in receipt of your request for an opinion which reads as follows:

"Article IV, Section 18, of the new constitution relates to the duties of the secretary of state in handling the returns of primary elections for the offices of governor, lieutenant governor, secretary of state, state auditor, state treasurer and attorney general.

"This section says, 'The returns of every election for governor, lieutenant governor, secretary of state, state auditor, state treasurer and attorney general shall be sealed and transmitted by the returning officers to the secretary of state, who shall appoint two disinterested judges of a court of record of the state, and the three shall constitute a board of state canvassers.' Then, it goes on to say, 'The board shall meet at the State Capitol on the second Tuesday of December next after the election

"The writer has been unable to find any mention of the meeting of the board after the primary, although Section 11566 of the Missouri Election Laws states, 'The canvass of votes shall be made in the same manner and by the same officers as the canvass of an election

As stated in your request, Section 18, Article IV of the Constitution of Missouri, 1945, provides in part as follows:

"The returns of every election for governor, lieutenant governor, secretary of state, state auditor, state treasurer and attorney general shall be sealed and transmitted by the returning officers to the secretary of state, who shall appoint two disinterested judges of a

court of record of the state, and the three shall constitute a board of state canvassers. The board shall meet at the State Capitol on the second Tuesday of December next after the election and forthwith open and canvass the returns of the votes cast and from the face thereof ascertain and proclaim the result of the election. * * * *"

It might be well to point out that Section 11461, R. S. Mo. 1939, provides a different method for canvassing the votes for the elective state officials but since this section is in conflict with Section 18, Article IV, quoted above, it has been repealed and superseded. State ex rel. Elsas v. Missouri Workmen's Compensation Commission, 318 Mo. 1004, 2 S.W.(2d) 796.

Section 11566, R. S. Mo. 1939, is found in the article which relates to primary elections and provides in part as follows:

"The canvass of votes shall be made in the same manner and by the same officers as the canvass of an election * * * *"

It will be noted that Section 11566, supra, relating to the canvassing of the votes of a primary election incorporates by reference the laws relating to the canvassing of the votes of the general election and such laws are included and must be read into the section as if they were actually set forth therein. State ex rel. School District vs. Lee, 334 Mo. 513, 66 S. W.(2d) 521.

The rule as to how much of a statute or a part of a Constitution is incorporated in another statute by reference is given in State v. Lloyd, 7 S.W.(2d) 344, as follows: (l.c. 346)

"So a statute may adopt a part or all of another statute by a specific and descriptive reference thereto, and the effect is the same as if the statute or part thereof adopted had been written into the adopting statute. Where, however, the adopted statute is referred to merely by words describing its general character, only those parts of it which are of a general nature, or particularly relate to the subject of the adopting statute, will be construed as incorporated into the latter in the absence of a clear intention to adopt the whole act." (underscoring ours.)

Therefore, when Section 11566, supra, incorporates the procedure for canvassing the votes set forth in Section 18, Article IV, of the Constitution it adopts only that part of the provision which

is of a general nature and the clause that provides that the canvassing board shall meet at the State Capitol "on the second Tuesday of December next after the election" does not apply and is not included therein.

In view of the fact that no time is prescribed within which the board of state canvassers must canvass the results of the primary election the general rule will apply, that is, that where no time is designated within which an officer must perform a duty it is presumed that such act must be performed within a reasonable time.

CONCLUSION

It is, therefore, the opinion of this department that the returns of the votes of the primary election for the nomination for the offices of Governor, Lieutenant Governor, Secretary of State, State Treasurer, State Auditor and Attorney General shall be canvassed by the board of state canvassers consisting of the Secretary of State and two disinterested judges of a court of record of this state appointed by the Secretary of State and such canvass shall be made within a reasonable time after the primary election.

Respectfully submitted,

ARTHUR M. O'KEEFE
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APPROVED:

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