

ELECTIONS ) Special election for referendum may be ordered  
REFERENDUMS ) by General Assembly at a special session. Ex-  
LEGISLATURE ) penses incurred at such election may be paid by  
APPROPRIATIONS ) the state if law authorizing such payment is passed.

October 28, 1949

11/3/49

Honorable Forrest Smith  
Governor of Missouri  
Executive Offices  
Capitol Building  
Jefferson City, Missouri



Dear Governor Smith:

This is in answer to your letter of recent date requesting an official opinion of this Department and reading as follows:

"I have your opinion of September 27, 1949, concerning the authority of the legislature to order a special election at which House Bill No. 185 of the Sixty-fifth General Assembly may be referred to a vote of the people if sufficient referendum petitions are filed with the Secretary of State.

"I would like to have your opinion as to

" 1 - whether or not this election may be ordered by the General Assembly at a special session called by the Governor, and

" 2 - whether or not the expenses incurred by the counties in such an election may be paid for by the State of Missouri."

Section 9 of Article IV of the Constitution of Missouri provides in part as follows:

" \* \* \* On extraordinary occasions he may convene the general assembly by proclamation, wherein he shall state specifically each matter on which action is deemed necessary."

The general rule is that in the absence of any constitutional restriction, the power of the Legislature at an extraordinary

session is as broad as the power at a regular session. We find the rule stated in 50 Am. Jur. 63, as follows:

"In the absence of a constitutional provision limiting the power of the legislature to pass laws at a special session, its legislative power when convened in special session is as broad as a regular session. \* \* \*"

In Volume 59 C. J., at page 528, we find the following:

"Where there is no constitutional restriction upon the authority of a legislative body in special session, it may enact any law at such session that it might at a regular session. \* \* \*"

In the case of State v. Rawlings, 134 S.W. 530, the Supreme Court of Missouri said in discussing what is now subsection 7 of Section 39, Article III of the Constitution of Missouri, at l.c. 533:

" \* \* \* By this last-named section of our organic law, undoubted power is conferred to enact any laws which the Governor may by special message recommend to the General Assembly after it has been convened in extraordinary session. \* \* \*"

Section 52, Article III of the Constitution provides in part as follows:

" \* \* \* All elections on measures referred to the people shall be had at the general state elections, except when the general assembly shall order a special election. \* \* \*"

The power of the General Assembly to order a special election as provided in the quoted portion of Section 52, Article III of the Constitution, supra, is not limited to the regular sessions thereof. Such special election may be ordered by the General Assembly at an extraordinary session convened by the Governor.

The authority of the General Assembly at an extraordinary session is limited only by the provisions of Section 9 of Article IV and Subsection 7, Section 39 of Article III of the Constitution. Subsection 7 of Section 39 of Article III provides as follows:

"The General assembly shall not have power:

\* \* \* \* \*

"To act, when convened in extra session by the Governor, upon subjects other than those specially designated in the proclamation calling said session or recommended by special message to the general assembly, after the convening of an extra session."

In the case of State v. Adams, 19 S.W. (2d) 671, the Supreme Court of this state said at l. c. 674:

" \* \* \* The law is well settled in this and other jurisdictions. The authority of the General Assembly, in special session, to legislate must be found in the proclamation convening the Assembly or in a special message to the Assembly after it convenes. Section 55, art. 4, Constitution. And the Governor must 'state specifically each matter concerning which the action of that body (assembly) is deemed necessary.' Section 9, art. 5, Const. These provisions are mandatory. \* \* \*"

Therefore, the ordering of a special referendum election by the General Assembly as authorized in Section 52 of Article III of the Constitution may be accomplished by the General Assembly at an extraordinary session. There is at present no authority for the payment to counties by the State of Missouri of expenses incurred by the counties in holding elections. Therefore, the legislature can not at present appropriate money for payment to the counties for expenses incurred in holding an election because general legislation can not be included in an appropriation act. In the case of State ex rel. v. Canada, 113 S.W. (2d) 783, the Supreme Court of this state said at l. c. 790:

" \* \* \* Legislation of a general character cannot be included in an appropriation bill. To do so would violate section 28 of article 4 of the Constitution, which provides that no bill shall contain more than one subject which shall be clearly expressed in its title. \* \* \*"

The Constitution of the State of Missouri is a limitation on power and not a grant of power, therefore, the legislature may enact any law not specifically prohibited by the Constitution. In the case of McGrew v. Paving Co., 247 Mo. 549, the Supreme Court said at l. c. 570:

" \* \* \* In the absence of constitutional limitations the Legislature is supreme and may enact any law which in its wisdom it may deem best for the residents of our municipalities and the people of the State at large. In other words, the Legislature represents the sovereign people, who have unlimited power to enact laws, except as limited by the State

and Federal constitutions; and in the absence of such limitations all enactments of the Legislature are valid and binding, however unreasonable and oppressive they may be. This is elementary. \* \* \*

Section 10 of Article X of the Constitution provides in part as follows:

"Nothing in this Constitution shall prevent the enactment of general laws directing the payment of funds collected for state purposes to counties or other political subdivisions as state aid for local purposes."

Therefore, if a law is enacted providing that the state shall pay to the counties the expenses incurred by the counties in holding referendum elections, appropriations may be made under authority of such law whether an appropriation for such payment is for a "state purpose", or a "local purpose" since the enactment of a law authorizing such payment is not prohibited by the Constitution. The effective date of a law authorizing the payment by the state to the counties for such expenses would be governed by the provisions of Section 29, Article III of the Constitution.

#### CONCLUSION.

1. It is the opinion of this Department that the General Assembly may at an extraordinary session order a special referendum election, if such purpose is designated in the Governor's Proclamation convening such extraordinary session or in a special message by the Governor to the General Assembly at such session.

2. It is further the opinion of this Department that under the present law, the State of Missouri cannot pay to the counties the expenses incurred by the counties in holding such election. The General Assembly may provide by general law that the State of Missouri shall pay to the counties the expenses incurred in holding referendum elections, and if such law is passed, appropriations for this purpose may be made by the State of Missouri.

Respectfully submitted,

C. B. BURNS, JR.  
Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
Attorney General

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