

March 6, 1967



Honorable Kenneth J. Rothman
State Representative, 8th District
Room 410, Capitol Building
Jefferson City, Missouri

Dear Mr. Rothman:

This is in response to your request dated December 29, 1966, for an opinion respecting a proposed bill which would permit a vote in St. Louis County for the adoption of the Missouri Non-Partisan Court Plan. You have asked the question whether the proposition can be submitted to the voters of the county at a general primary election during the month of August, 1968.

The relevant provision of Article V, Section 29(b) of the Constitution provides:

"At any general election the qualified voters of any judicial circuit outside of the City of St. Louis and Jackson County, may by a majority of those voting on the question elect to have the judges of the courts of record therein appointed by the governor in the manner provided for the appointment of judges to the courts designated in Section 29 (a). The general assembly may provide the manner in which the question shall be submitted to the voters."

It is to be noted that Section 29(b) commences: "At any general election * * *", further the section concludes with the sentence "The general assembly may provide the manner in which the question shall be submitted to the voters."

In essence the problem then is what is meant by the language "any general election" in Section 29(b), Article V and can the Legislature in enacting enabling legislation to

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carry out the provisions of Section 29(b) authorize the voters to adopt the non-partisan court plan at a time other than the 1968 general election held in November of 1968. Section 1.020, RSMo 1959, under definition 3, provides:

"(3) 'General election' means the election required to be held on the Tuesday succeeding the first Monday of November, biennially;"

We have found no cases which have construed the precise meaning of Section 29(b), Article V. One case in Missouri has discussed at some length the distinction between the general and special elections as applied to the St. Louis City Election Laws. In *Dysart vs. St. Louis*, 11 S.W.2d 1045, the Supreme Court was considering the situation which arose because of an election for a bond issue which was held in St. Louis City on August 7, 1928, the date of the regular primary election which was the first Tuesday in August. It was contended by those attempting to nullify the bond issue that the provision of the law relating to registration applicable to St. Louis had been violated because there was no previous revision of the registration of voters as required by Section 40 of the St. Louis Election Laws which provided that there must be a previous revision of the registration before any special election at which is submitted a proposition to increase the indebtedness of the city. The Court there held that a primary election is a general election. The Court considered the definition of general election now appearing in Section 1.020, supra, and the case of *Hass vs. Neosho*, 139 Mo. App. 292, which held that a primary election is not a "general election", but held in effect that any election including a primary election regularly held is a general election and that a special election is one not provided for to occur at regular intervals. The court held that any local election may be either general or special and that this wipes out the definition of general election found in Section 1.020. The court then stated that insofar as St. Louis City election laws are concerned there is no distinction between a primary and any other general election. The court did in the *Dysart* case while considering the construction to be placed upon the St. Louis City Election Laws conclude that under that law the August primary election is a regular general election within the meaning of that law. However, this is not very helpful, in our view in construing the meaning of Section 29(b) of the Constitution. Since, however, this is the only authority that points in this direction and since Section 29(b) provides that the general assembly may provide the manner in which the question shall be submitted to the voter, we conclude that the framers of the Constitution

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intended to grant plenary power to the general assembly to decide at what election and in what manner the proposition should be submitted to the voters. We think it may be inferred that the Constitution does not authorize the Legislature to submit the proposition at a special election called solely for that purpose.

We therefore conclude that in the light of the ambiguous language we find in Section 29(b), Article V and the arguable language which we find in the *Dysart* case that it is within the power of the Legislature to authorize the proposition for submission of the Non-partisan Court Plan to be submitted to the voters of St. Louis County at the regular August Primary Election of 1968.

Very truly yours,

NORMAN H. ANDERSON
Attorney General