

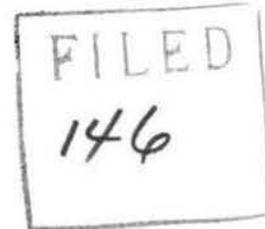
ELECTIONS:
REFERENDUM:
GENERAL ASSEMBLY:

The General Assembly may, in its discretion, set a special election date for a vote on a measure which has been referred to a vote of the people by a proper referendum petition.

OPINION NO. 146

January 22, 1970

Honorable John J. Johnson
State Senator, District 15
Room 420, Capitol Building
Jefferson City, Missouri 65101



Dear Senator Johnson:

This is in answer to your letter of recent date in which you ask whether the General Assembly has the authority to fix a date for an election on a referred measure on a date other than the date specified in the referendum petition requesting that the measure be referred to the people for a vote.

It is our view that the General Assembly has the power to determine the date upon which a vote is to be had at a special election when a referendum petition has been presented to the Secretary of State and such petition has been determined to be sufficient.

Section 52(b) of Article III of the Constitution of Missouri insofar as referendum elections are concerned 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. . . ."
(Emphasis added)

The language of the Constitution appears to be perfectly clear and specific in stating that all elections on measures referred to the people are to be held at the general state elections, that is the biennial November elections in even numbered years with the exception that the General Assembly does have the discretionary authority to order a special election on a measure referred to the people.

Section 126.020, RSMo 1959, provides a suggested petition form for the referendum to the people on a measure that has passed the General Assembly. Such section provides that the form set out

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in such section shall be substantially the form of the petition to refer to a vote of the people a measure that has passed the General Assembly. Such section provides as follows:

"The following shall be substantially the form of petition for the referendum to the people on any law passed by the general assembly of the state of Missouri:

WARNING

It is a felony for anyone to sign any initiative or referendum petition with any name other than his own, or to knowingly sign his name more than once for the same measure, or to sign such petition when he is not a legal voter.

PETITION FOR REFERENDUM

To the Honorable, Secretary of State for the state of Missouri:

We, the undersigned, citizens and legal voters of the state of Missouri (and the county of), respectfully order that the senate (or house) bill No., entitled (title of law), passed by the general assembly of the state of Missouri, at the regular (special) session of said general assembly, shall be referred to the people of the state, for their approval or rejection, at the regular (special) election to be held on the day of, A. D. 19--, and each for himself says: I have personally signed this petition; I am a legal voter of the State of Missouri and county of, my residence and post office are correctly written after my name.

Name, Residence,
Post office,
(If in a city, street and number.)

(Here follow numbered lines for signatures.)"

Such suggested form enacted by the legislature provides that the petition can contain the provision that the measure to be referred will be voted on at a regular or special election to be held

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on a date to be inserted in the petition. The Constitution of Missouri in Section 52(b) of Article III, supra, specifically and clearly specifies the elections at which measures may be referred to a vote of the people and states that all such measures must be referred either at the regular November biennial elections or at a special election to be ordered at the discretion of the General Assembly. No other provision is found in the Constitution for such elections and there is no authority for the legislature to enact any legislation contrary to a clear specific constitutional provision. Therefore, the suggested form of petition found in Section 126.120, insofar as it purports to provide for a specific election date in a petition for a referendum, is beyond the power of the legislature to enact. It follows that it is beyond the power of the persons signing or submitting a referendum petition to determine the date of the referendum election.

In the case of State v. Missouri Workmen's Compensation Commission, 2 S.W.2d 796, the Supreme Court succinctly pointed out the fact that the Constitution prevails over any contrary legislative enactment. The court said l.c. 799:

" . . . The voice of the Constitution is stronger than that of the Legislature, and stronger than all of the rules of construction, supra, as urged by the Attorney General in behalf of the commission. If there be conflict, both legislative acts and rules of construction must fall before unambiguous and plain constitutional provisions. . . ."

In view of the fact that the Constitution provides for the election dates for referred bills, it is clear that the provision in Section 126.020 purporting to authorize the setting of a date for a referendum election by those signing or submitting the petition is unconstitutional, invalid and void.

Section 25 of Article II of the Constitution of North Dakota provides in part as follows:

"Each measure initiated by or referred to the electors, shall be submitted by its ballot title, which shall be placed upon the ballot by the Secretary of State and shall be voted upon at any state-wide election designated in the petition, or at a special election called by the Governor. . . ."

The Supreme Court of North Dakota in the case of State ex rel. Frazier v. Hall, 197 N.W. 687 held that such constitutional provision did authorize the Governor to set a special election date for the referendum election. The court said l.c. 688:

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"The precise question presented upon this appeal is whether the Governor has the power, pursuant to the constitutional provisions quoted, to call a special election in advance of the time designated by petitioning electors in referendum petitions. In answering this question, we are clearly of the opinion that the language of the constitutional provisions and intent thereof, considered in connection with the cognate law, contemplated and gave the power to petitioning electors to designate in referendum petitions a time when referred acts, not emergency measures, might be submitted to the electors at any state-wide election, and also gave to the Governor the power to accelerate the time of holding an election upon such referred measures by calling a special election. These alternative powers so granted to the petitioning electors and to the Governor are consistent with the fundamental theory of checks and balances, and act as checks one upon the other, so that the petitioning electors, if they so desire, may fix the time beyond which such election may not be deferred, and, on the other hand, so that the Governor, if in his judgment the exigencies of the situation so require, may accelerate the time designated by calling a special election."

Under the North Dakota Constitution, of course, the petitioners did have the right to designate a general election date at which the election was to be held on the referred bill, whereas the general biennial election date is specifically set out in the Missouri Constitution itself. The court interpreting a constitutional provision similar to that of Missouri held that the constitutional provision authorizing a special election to be called by the Governor specifically granted him discretionary authority to set a special election date before the general election designated in the petition. Insofar as the Missouri Constitution is concerned, of course, the power is given to the General Assembly rather than the Governor to set the special election date.

Section 3 of Article V of the Constitution of Oklahoma provides in part as follows:

". . . All elections on measures referred to the people of the State shall be had at the next election held throughout the State, except when the Legislature or the Governor shall order a special election for the express purpose of making such reference. . . ."

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In the case of Simpson v. Hill, 263 P. 635, the Supreme Court of Oklahoma decided a case in which it was necessary to determine whether or not a measure submitted by the initiative was passed at an election. The facts as stated by the court showed that the Governor had in August issued his proclamation under authority and by direction of the legislature calling a special election for October 2 for a vote on certain constitutional amendments proposed by the legislature of the state. After the Governor made such proclamation setting a special election date, initiative petitions were filed proposing a certain measure. The initiated measure was placed on a ballot at the special election and received a majority vote. The Governor did not issue any proclamation or order directing that the initiated measure be voted on at such election nor did the legislature make any such direction. The court held that the initiated measure was not properly adopted because there was no setting of a special election date at which such initiative measure was to be submitted either by the Governor or the legislature. The court said l.c. 637:

". . . The Legislature did not order that this initiated measure be submitted at the said election. Neither did the Governor issue any proclamation or order directing the submission of the same to the people of the state of Oklahoma on said date, or on any other date when an election was held. There being no order of the Legislature, or the Governor, the question is, Did the affirmative vote in favor of the said initiative measure give it any force and effect as law?

* * * * *

"Sections 2 and 3 of article 5 of the Constitution deal with the question of initiating measures, and referring same to a vote of the people. In section 3 is found this language:

"All elections on measures referred to the people of the state shall be had at the next election held throughout the state, except when the Legislature or the Governor shall order a special election for the express purpose of making such reference."

"It is clear that such initiative measures must go to the next regular general election held throughout the state, unless the Governor or the Legislature shall order that it be

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submitted at a special election. The election of October 2, 1923, was a special election.

"Not having been submitted at the said special election by direction of the Governor or the Legislature, initiative measure No. 79 was not presented for consideration of the people as by the Constitution of the state directed, and it has no force and effect. . . ."

The Supreme Court of Oklahoma in such case recognized the authority of the Governor or the General Assembly to set a special election date but held that where no such date had been set the measure could not be adopted at the special election for constitutional amendments submitted by the legislature.

In the case of Updegraff v. Gary, 298 P.2d 404, the Supreme Court of Oklahoma refused to issue a writ of mandamus requiring the Governor to designate the primary election date as a "special election" for all initiative petitions and referred measures accepted by the Secretary of State of which the Governor had been notified. The court held that under the Oklahoma Constitution the Governor had a discretionary power to determine whether or not he would call a special election for the purpose of voting on a measure submitted by the initiative or on a measure to be referred and that such discretion could not be controlled by a court but could be exercised by the Governor as he saw fit. The court said l.c. 406:

"It appears from the foregoing that the Governor may, in his discretion, call a special election for the submission of an initiated or referred measure, or he may, in his discretion, designate the mandatory primary election as a special election for such purpose. . . ."

We believe from the plain provisions of the Constitution of Missouri and the interpretation that has been placed on similar provisions in constitutions of other states that the Missouri Constitution itself sets the election date for referred measures as the November biennial election date or the special election date that the General Assembly may, in its discretion, order for any referred measure.

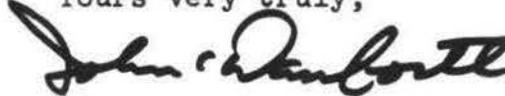
CONCLUSION

It is the opinion of this office that the General Assembly may, in its discretion, set a special election date for a vote on

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a measure which has been referred to a vote of the people by a proper referendum petition.

Yours very truly,

A handwritten signature in cursive script, reading "John C. Danforth". The signature is written in black ink and is positioned above the typed name.

JOHN C. DANFORTH
Attorney General