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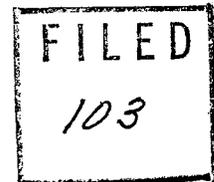
JOHN ASHCROFT
ATTORNEY GENERAL

DIRECT DIAL:

August 13, 1984

OPINION LETTER NO. 103-84

The Honorable Carole Roper Park
Representative, District 52
11415 East Gill Street
Sugar Creek, Missouri 64054



Dear Representative Park:

This letter is in response to your request for an opinion of this office asking whether the City of Independence, Missouri, can amend its charter to provide for the regular election of municipal officers on some day other than the first Tuesday in April. We understand that under the present charter provisions the City of Independence holds its primary election on the first Tuesday after the first Monday in February and the general election on the first Tuesday in April commencing in 1980 and every fourth year thereafter. Your question, therefore, requires the determination of whether the provisions of Section 115.121.3, RSMo 1978, (which provides that the municipal election day shall be the first Tuesday in April) control or whether the provisions of Section 115.123, RSMo Supp. 1983, (which authorizes several election days for municipalities) control.

Section 115.121.3 provides:

The election day for the election of political subdivision and special district officers shall be the first Tuesday in April each year; and shall be known as "municipal election day".

Section 115.123 provides:

1. All public elections shall be held on Tuesday. Except bond elections necessitated by fire, vandalism or natural disaster, except elections for which ownership of real property is required by law for voting, except special

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elections to fill vacancies and to decide tie votes or election contests, and except as otherwise expressly provided by city or county charter, all public elections shall be held on the general election day, the primary election day, the municipal primary day, municipal general election day, the first Tuesday after the first Monday in February, March, June, August, or November or with an election on another day expressly provided by city or county charter. The election authority of each county shall make the selection of either the February or March election date, but not both dates for the same political subdivision or special district. After January 1, 1978, no city or county shall adopt a charter or charter amendment which calls an election on any day other than the February or March, April, June, August, or November election days specified in this section.

2. Notwithstanding the provisions of subsection 1 of this section, school districts may hold special levy elections on the first Tuesday after the first Monday in October.

These sections were first enacted in the Comprehensive Election Act of 1977, S.S.H.B. 101, Laws of Missouri, 1977, pp. 207 et seq., as Sections 6.001 and 6.005, p. 229. Although both sections have since been amended, and the latest amendment pertains to Section 115.123, the substantive provisions remain similar to those originally enacted. Therefore, it is our view that the sections have to be read together.

Clearly, Section 115.121.3 provides that the municipal election day will be on the first Tuesday in April. It is also clear that Section 115.123 provides that certain elections may be held on other specified days. Since Section 115.121 mandates the regular election of municipal officers on the first Tuesday in April, Section 115.123 cannot be read to allow the regular election of municipal officers on any other day. Any interpretation of Section 115.123 which would conflict with Section 115.121 would be inappropriate.

Section 115.121 of the Comprehensive Election Act is of state-wide application. See Section 115.005, RSMo 1978. Since it expresses a legislative mandate which applies to all political subdivisions, it applies to constitutional charter cities which amend their charter election dates. Cf. Cohen v. Poelker, 520 S.W.2d 50, 54 (Mo. banc 1975).

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We conclude that cities, including constitutional charter cities amending their charter election dates, must hold their regular election of officers on the first Tuesday in April and their municipal primary elections in February or March as selected by the election authority.

Very truly yours,

A handwritten signature in black ink that reads "John Ashcroft". The signature is written in a cursive style with a prominent initial "J" and a long, sweeping underline.

JOHN ASHCROFT
Attorney General