

ELECTION RETURNS OF
THE CITY OF ST. LOUIS:

FILED
26

In making election returns to the Board of Election Commissioner ballots should be enclosed and sealed in four separate containers as follows: (1) The general blanket ballots together with ballots marked "defective, objected to, or rejected;" (2) The Constitutional Ballots; (3) The Judicial Ballots and; (4) The unused ballots together with the stubs of used ballots.

October 23, 1952

10-24-52

Board of Election Commissioners
City of St. Louis
208 South Twelfth Boulevard
St. Louis (2) Missouri

Attention: Mr. Joseph P. Uxa, Chief Clerk

Gentlemen:

Your request for an opinion of this office concerning the general election laws of Missouri has been received, which request is as follows:

"At previous November elections it has been the custom of this office to have returns made by election officials in the following manner:

"(1) General Blanket Ballot. In cloth sack having ward and precinct number printed thereon, together with the date of the election. (Section 118.560 provides blanket ballots shall be 'enclosed in an envelope.' Section 111.630 specifies they shall be 'sealed up in a package').

"(2) Unused Blanket Ballots. In a separate sack, together with stubs of voted ballots. (Section 111.450).

"(3) Constitutional Ballot. Placed in cardboard box with date of election, etc., on lid of box. (Section 125.050 provides it be deposited by Judges of Election in a separate ballot box).

"(4) Judicial Ballot. In separate cardboard box.

Board of Election Commissioners

"Thus making a total of two sacks and two cardboard boxes which must be handled when they are returned in the iron ballot box.

"In the interest of efficiency, we would like to combine some of these returns, if legally possible. Therefore, in your opinion, could all voted ballots, namely, General Blanket, Constitutional, Judicial, be returned in one sack?

"If it is found that the various voted ballots must be returned separately, could the unused blanket ballots and stubs of voted ballots be returned with the Candidates' voted ballots in one sack?"

The first subdivision of your request has to do with the general blanket ballot. Chapter 118, RSMo 1949, deals with registration and elections in the City of St. Louis.

A part of Section 118.560, RSMo 1949, is as follows:

"* * * Immediately after making such proclamation and before separating, the judges shall fold in two folds and string closely upon a single piece of flexible wire, strong string, thread or twine, in the order in which they have been read, all ballots which have been counted by them; separate those marked 'objected to,' 'defective' or 'rejected', unite the ends of such wire in a firm knot; seal the knot in such a manner that it cannot be untied without breaking the seal, enclose the ballots so strung in an envelope, upon which shall be endorsed in writing or print the number of the precinct and the date upon which such election was held; securely tie and seal such envelope with the official wax and impression seals to be provided by the judges, in such a manner that it cannot be opened without breaking the seals and return the ballots, together with the ballots marked 'defective,' 'objected to' or 'rejected' in such sealed package or envelope to the board of election commissioners.* * *"

Board of Election Commissioners

It is apparent that the Legislative intent here expressed is to the effect that the general blanket ballots actually voted and counted should be sealed, "in an envelope" "together with the ballots marked 'defective, objected to, or rejected.'"

The Legislature by expressing what should be placed in the envelope or package excludes everything else.

The Supreme Court in *Keane v. Strodtman, Sheriff*, 323 Mo. 161, 18 SW (2d) 896, 898 said:

"* * * The familiar maxim of 'expressio unius est exclusio alterius' may also be invoked, for the maxim is never more applicable than in the construction of statutes. *Whitehead v. Cape Henry Syndicate*, 105 Va. 463, 54 S. E. 306; *Hackett v. Amsden*, 56 Vt. 201, 206; *Matter of Attorney General*, 2 N. M. 49."

The same principle is announced by the Supreme Court of Missouri en banc in *State ex rel vs. Smith* 342 Mo. 75, 111 SW (2d) 513, 514 as follows:

"* * * To uphold appellant in his contention would 'violate the well-known canon of statutory construction, viz. that the expression of one thing is the exclusion of another.' *State ex inf. Conkling ex rel. Hendricks v. Sweaney*, 270 Mo. 685, loc. cit. 692, 195 S. W. 714, 716."

We are forced to the conclusion that nothing should be included in "the package or envelope" returned to the board of election commissioners except the general blanket ballots voted, and the ballots marked "defective, objected to, or rejected."

We next consider subdivision number three of your request in which you refer to "the constitutional ballots".

Section 125.050, RSMo 1949, deals with the Constitutional Ballot - form and method of marking. This section provides that all constitutional amendments "shall be printed upon a separate official ballot to be designated 'Constitutional Ballot.'"

Said Section 125.050 further provides as follows:

Board of Election Commissioners

"* * * The clerk of the county court of each county shall provide for each district in his county, and the election commissioners for each election district in their city, a separate ballot box for the deposit and reception of the constitutional ballots."

It is quite apparent that the Legislature intended that, to a great extent, the Constitutional Ballot should be separate from the other election ballots. It is to be a separate ballot designated "Constitutional Ballot" and a separate ballot box has to be provided "for the reception and deposit of the Constitutional Ballots."

Section 125.060, RSMo 1949, is as follows:

"The election on such proposed constitutional convention, on the adoption of a new constitution, or on any constitutional amendment or amendments, shall be conducted and the returns made thereof to the several county clerks, and shall by them be certified to the secretary of state, as provided by law in cases of the election of state officers."
(Underscoring ours.)

This section provides that the returns of the Constitutional Ballot shall be made to the several county clerks in the same manner as provided by law in cases of the election of state officers. The statute relating to the election of state officers in St. Louis as we have above indicated, is Section 118.560, RSMo 1949, and sets out the manner in which such ballots should be returned. We have above indicated that nothing should be enclosed with the general blanket ballots voted and those marked "defective, objected to, or rejected."

If the constitutional ballots are to be returned in the same manner as the general blanket ballots, it is the apparent intention of the Legislature that the constitutional ballots should be enclosed and sealed separately from all other ballots.

Subdivision four of your request makes inquiry relative to the return of the Judicial Ballot. Section 29 of Article V of the Missouri Constitution deals with the nonpartisan judicial ballot and selection of judges. You will note that Section 29 (c) (1) Article V of the Missouri Constitution provides that in the selection of judges in the nonpartisan plan, the Consti-

Board of Election Commissioners

tution requires "a separate judicial ballot, without party designation * * *"

The latter part of Section 29 (c) (2) Article V of the Missouri Constitution is as follows:

"* * * the judicial ballots required by this section shall be prepared, printed, published and distributed, and the election upon the question of retention of such judge in office shall be conducted and the votes counted, canvassed, returned, certified and proclaimed by such public officials in such manner as is now provided by the statutory law governing voting upon measures proposed by the initiative." (Underscoring ours.)

The statutory law governing the return of measures proposed by the initiative appears in Section 126.090, RSMo 1949. The first part of which section is as follows:

"The votes on measures and questions shall be counted, canvassed and returned by the regular boards of judges, clerks and officers as votes for candidates are counted, canvassed and returned, and the abstract made by the several county clerks of votes on measures shall be returned to the secretary of state on separate abstract sheets, in the manner provided for abstract of votes for state and county officers." (Underscoring ours.)

This section provides that the ballots shall be counted, canvassed and returned as votes for candidates are counted, canvassed and returned.

The reasoning set out herein in answer to subdivision three of your request should be again applied. By the use of such reasoning here, it is apparent that the judicial ballots should be enclosed in a separate "envelope or package," sealed and returned, to your Board of Election Commissioners.

This leaves subdivision two of your request for consideration, which relates to the unused ballots and stubs of voted ballots.

We call your attention to the latter part of Section 111.450, RSMo 1949, which is as follows:

"* * * All unused ballots and all stubs as provided for in section 111.430 furnished each voting place shall be returned to the county clerk or board of election commissioners."

Board of Election Commissioners

Section 111.460, RSMo 1949, is as follows:

"All unused ballots delivered to the clerk of the county court or board of election commissioners may be distributed to schools in the county if requested by such schools. All unused ballots so distributed shall be stamped 'Void' by the county clerk or clerk performing like duties for cities or counties."

This last section contemplates that your Board of Election Commissioners upon the return of the unused ballots may immediately distribute such ballots to your schools, if requested, after such ballots have been stamped "Void."

The latter part of Section 3, Article VIII of the Missouri Constitution is as follows:

"* * * All election officers shall be sworn or affirmed not to disclose how any voter voted; provided, that in cases of contested elections, grand jury investigations and in the trial of all civil or criminal cases in which the violation of any law relating to elections, including nominating elections, is under investigation or at issue, such officers may be required to testify and the ballots cast may be opened, examined, counted, compared with the list of voters and received as evidence."

The last quoted section contemplates that the ballots actually cast shall remain closed and sealed unless there is an election contest or a trial in which there is some question relating to the violation of the election laws, then and only then, may the ballots cast be opened for the inspection of anyone.

Section 111.630, 1951 Supplement of RSMo 1949, also provides that in case of contested elections the ballots cast may be opened. It is evidently intended that the unused ballots may be opened by the Board of Election Commissioners immediately upon their return and the general blanket ballots cannot be opened except in case of an election contest.

Under these conditions it would be improper to enclose and seal the unused ballots which may be opened immediately upon their return together with the general blanket ballots which cannot be opened except in case of an election contest.

Board of Election Commissioners

The unused ballots together with the stubs of the used ballots should be enclosed in a separate package.

CONCLUSION

We are therefore of the opinion that four separate containers should be used in returning the election ballots to the Board of Election Commissioners for the City of St. Louis, which ballots should be separated as follows:

- (1) The general blanket ballots together with the ballots marked "defective, objected to, or rejected;"
- (2) The Constitutional Ballots;
- (3) The Judicial Ballots; and
- (4) The unused ballots together with the stubs of the used ballots.

Very truly yours,

GROVER C. HUSTON
Assistant Attorney General

APPROVED:



J. E. TAYLOR
Attorney General

GCH:lw