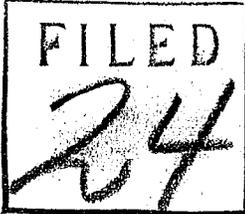


SHERIFFS:
CONSTITUTIONAL LAW:

County sheriffs receiving a certificate of election under Section 57.010, RSMo 1949, must be commissioned by the Governor under Article IV, Section 5, Missouri Constitution of 1945.



December 7, 1954

Honorable Phil M. Donnelly
Governor of Missouri
Executive Office
Jefferson City, Missouri

Dear Governor Donnelly:

This formal opinion is rendered in answer to your recent oral inquiry which this office restates in the following language.

Is it the duty of the Governor of Missouri to issue a commission to county sheriffs who have been issued a certificate of election under the terms of Section 57.010, RSMo 1949.

Section 57.010 RSMo 1949 provides as follows:

"At the general election to be held in 1948, and at each general election held every four years thereafter, the qualified voters in every county in this state shall elect some suitable person sheriff. No person shall be eligible for the office of sheriff who has been convicted of a felony. Such person shall be a resident taxpayer and elector of said county, shall have resided in said county for more than one whole year next before filing for said office and shall be a person capable of efficient law enforcement. When any person shall be elected sheriff, the clerk of the county court shall deliver

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to him a certificate of his election, under the seal of the court, and shall also certify that fact to the clerk of the circuit court, who shall file the certificate in his office; and he shall enter upon the discharge of the duties of his office on the first day of January next succeeding his election."

Article IV, Section 5, Missouri's Constitution of 1945, contains the following language relative to the Governor's duty in commissioning officers.

"The Governor shall commission all officers unless otherwise provided by law. All commissions shall be issued in the name of the state, signed by the governor, sealed with the Great Seal of the state and attested by the secretary of state."

In the early case of State ex rel. Attorney General v. Pool, 41 Mo. 32, the Supreme Court of Missouri was ruling the question of whether a person duly elected sheriff could discharge the duties of such office before receiving a commission from the Governor. The constitutional provision then before the Court was not unlike the constitutional provision quoted in the preceding paragraph. In ruling the point the Court spoke as follows at 41 Mo. 32, 1.c. 38:

"It is within the competency of the Legislature to declare what requisites shall be sufficient to clothe the officer with authority, and induct him into office, without the necessity of a commission; but until an act is passed for that purpose the constitutional injunction seems to be imperative."

The foregoing case of State ex rel. Attorney General v. Pool was decided in 1867. In 1886 the St. Louis Court of Appeals ruled the case of Adams v. Harper, 20 Mo. App. 684, and construed Article V, Section 23 of Missouri's Constitution of 1875, which Section 23 conforms to Article IV, Section 5, of Missouri's Constitution of 1945, with only a slight change in language. The 1875 constitutional provision provided that:

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"The Governor shall commission all officers not otherwise provided for by law."

whereas the present constitutional provision reads:

"The Governor shall commission all officers unless otherwise provided by law." (Emphasis supplied.)

We do not consider the slight difference in wording found in the constitutional provision above quoted, to affect the ruling in Adams v. Harper, supra, wherein the Court throws light on the phrase "not otherwise provided for by law." The Court spoke as follows at 20 Mo. App. 684, l.c. 686, when holding that the county court had authority to commission a county treasurer:

"The point that the court erred in admitting in evidence the commission of the plaintiff, granted by the county court is based on the assumption that, by the terms of section twenty-three of article five, of the constitution, the governor, and not the county court, is required to issue the commission of the county treasurer. The constitutional provision is that, 'the governor shall commission all officers, not otherwise provided for by law.' Section 5362, Revised Statutes, provides that the county treasurer shall be commissioned by the county court. It is, therefore, a case 'otherwise provided for by law,' and the county court was the proper body to issue the commission."

A review of all statutes found in Chapter 57 RSMo 1949, the law particularly applicable to sheriffs, discloses no provision directing that the sheriff be commissioned. Therefore, under the ruling in Adams v. Harper, supra, it must be concluded that the sheriff must be commissioned by the Governor under the mandate found in Article IV, Section 5, Missouri Constitution of 1945.

CONCLUSION

It is the opinion of this office that county sheriffs who have been issued a certificate of election as provided

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in Section 57.010 RSMo 1949, must be commissioned by the Governor under the directive contained in Article IV, Section 5, Missouri's Constitution of 1945.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Julian L. O'Malley.

Yours very truly,

JOHN M. DALTON
Attorney General

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