

ELECTION:
COURTS:
CAPE GIRARDEAU COURT
OF COMMON PLEAS:
NOMINATIONS:

Special election to fill vacancy in office of judge of Cape Girardeau Court of Common Pleas may be called for any time at discretion of Governor; not less than ten days' notice to be given; candidates may be nominated by party judicial committees or by petitions of nomination; election to be conducted under Chapter III, RSMo 1949.



January 10, 1956

Honorable Stephen N. Limbaugh
Prosecuting Attorney
Cape Girardeau County
Cape Girardeau, Missouri

Dear Mr. Limbaugh:

This is in response to your request for opinion dated December 10, 1955, which reads as follows:

"Honorable J. Henry Caruthers, Judge of the Cape Girardeau Court of Common Pleas, Cape Girardeau, Missouri died last week and under Sections 480.170 and 480.180 Revised Statutes of Missouri, 1949, the Governor is required to call a special election for the purpose of filling the vacancy.

"It is my understanding that the Governor has already asked for a ruling from your office for a procedure to be followed in the conducting of this election and if such an opinion has been rendered, I should appreciate receiving a copy of it at your convenience.

"If you have not rendered such an opinion, I would appreciate it if you would do so setting out the procedure to be followed in the conduction of this election, how the candidates are to be chosen, the required notice of the candidates, if any, to the inhabitants of the county, the date when this could be held and the general procedure that should be followed in this respect.

"It would simplify matters if the election could be held at the same time the bond issue is to be voted on.

"I would appreciate receiving your opinion in this regard at your earliest convenience."

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Section 480.170, RSMo 1949, to which you refer, reads as follows:

"If any vacancy shall happen in the office of judge, by death, resignation, removal or otherwise, the governor shall, upon being satisfied that a vacancy exists, issue a writ of election to fill said vacancy; but every election to fill a vacancy shall be for residue of the term only."

As for the date on which this election can be held, about which you inquire, it is clear from this section that this is a matter resting solely within the discretion of the Governor and may be called for any date which he may decide upon.

The notice to be given is provided for in Section 111.210, RSMo 1949. That section reads as follows:

"When the governor issues a writ of election to fill any vacancy, he shall mention in said writ how many days, to be not less than ten, the sheriff shall give notice thereof."

The manner of choosing candidates for the election to fill a vacancy of this sort is not expressly provided for. However, on similar questions this office has previously rendered opinions and we believe the reasoning contained therein is equally applicable here.

In an opinion directed to David P. Plummer under date of November 16, 1950, copy enclosed, concerning nominations for a special election to fill a vacancy in the office of sheriff, it was held that the county party committees were authorized to make such nominations. The Plummer opinion is cited for this proposition only.

Again, in an opinion directed to William E. Tipton under date of September 6, 1955, copy enclosed, with regard to a special election to fill a vacancy in the office of state senator, it was held that the senatorial party committees were authorized to nominate candidates.

Since the jurisdiction of the Cape Girardeau Court of Common Pleas is coextensive with the county of Cape Girardeau (Sections 480.010, 480.020, RSMo 1949), the judicial committee; under Section 120.810 (3), is the county committee and is the body authorized to nominate candidates for this election.

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Although the Plummer opinion held that candidates could also be nominated by certificates of nomination signed by the requisite number of electors under Sections 120.01 - 120.06, House Bill No. 2057, 65th General Assembly, Sections 120.010 - 120.060, RSMo 1949, it is to be noted that, as pointed out in the Tipton opinion, Sections 120.010 - 120.080, RSMo 1949, were held in State ex rel. Preisler v. Toberman, Mo., 269 SW 2d 753, to have been by implication repealed by the enactment of Sections 120.140 - 120.230, RSMo, Cum. Supp. 1955. Inasmuch as sufficient time did not remain before the election for the method of nomination provided in Sections 120.140 - 120.230, supra, to be employed in that instance, the question was not passed on in that opinion. It was further held in a later opinion directed to John Clark under date of September 29, 1955, copy enclosed, that the fact that there was not sufficient time for independent candidates to file nominating petitions did not invalidate the call for special election.

We now rule, however, that if the Governor's call for the election does allow sufficient time for the method of nomination provided for in Sections 120.140 - 120.230, RSMo, Cum. Supp. 1955, to be used, that method of nomination may be employed also.

As to the conduct of the election and the general procedure to be followed, nothing is expressly provided by statute. However, Section 111.010, RSMo 1949, seems to make that chapter applicable to the conduct of all elections except those expressly excepted therefrom. Coupling this with the fact that some express provisions are made in that chapter for special elections to fill vacancies (Sections 111.200, 111.210, RSMo 1949), we are of the opinion that the Legislature intended for a special election to fill a vacancy in the office of Judge of the Cape Girardeau Court of Common Pleas to be conducted in accordance with Chapter 111, RSMo 1949, Cum. Supp. 1955.

CONCLUSION

It is the opinion of this office with regard to the special election to fill the vacancy existing in the office of judge of the Cape Girardeau Court of Common Pleas that:

1. The election may be called for any time within the discretion of the Governor;
2. The notice to be given is that specified in Section 111.200, RSMo 1949, i.e., not less than ten days;
3. Candidates may be nominated by the party judicial committees or by petitions of nomination if sufficient time remains therefor; and

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4. The general conduct of the election should be that provided for in Chapter 111, RSMo 1949, Cum. Supp. 1955.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, John W. English.

Yours very truly,

JOHN M. DALTON
Attorney General

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Enclosures: 3