

August 7, 1950

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ARIZONA ATTORNEY GENERAL

Mr. David H. Palmer, Jr.  
County Attorney  
Yavapai County  
Prescott, Arizona

Dear Mr. Palmer:

We have your letter of July 31, 1950 which reads in part as follows:

"I today received a request for an opinion from the Board of Supervisors, three paragraphs of which I herewith quote to you, to-wit:

'Is there any objection to combining the subjects of the two elections on one ballot by heading it "Primary and Special Elections" and putting the measures at the bottom of the ballot as is done on General Election ballots; or, by having one heading at the top "Primary Elections" and then following the candidates have another heading "Special Election" followed by the measures. \* \* \* '

We should like your opinion as soon as possible as to whether or not the ballots may be printed with the constitutional referendum measures printed on the Democratic, Republican and Non Partisan ballot. \* \* \* "

We assume that you refer to the measures to be submitted to the voters pursuant to Laws 1950, Chap. 24, Nineteenth Legislature, First Special Session (H.B. 105), a copy of which is enclosed for your convenience.

This statute was passed in accordance with Art. 21, Sec. 1, Arizona Constitution, which reads in part as follows:

"Any proposed amendment or amendments which shall be introduced in either house of the legislature, and which shall be approved by a majority of the

members elected to each of the two houses, shall be entered on the journal of each house, together with the ayes and nays thereon. When any proposed amendment or amendments shall be thus passed by a majority of each house of the legislature and entered on the respective journals thereof, or when any elector or electors shall file with the secretary of state any proposed amendment or amendments together with a petition therefor signed by a number of electors equal to fifteen per centum of the total number of votes for all candidates for governor in the last preceding general election, the secretary of state shall submit such proposed amendment or amendments to the vote of the people at the next general election (except when the legislature shall call a special election for the purpose of having said proposed amendment or amendments voted upon, in which case the secretary of state shall submit such proposed amendment or amendments to the qualified electors at said special election,) and if a majority of the qualified electors voting thereon shall approve and ratify such proposed amendment or amendments in said regular or special election, such amendment or amendments shall become a part of this constitution. \* \* \*"  
(Emphasis supplied)

The statute referred to which calls this special election states that such election is to be held "concurrently with the primary election to be held on that date".

In spite of the fact that the two elections are to be held at the same time and conducted by the same officers, they are nevertheless separate and distinct from one another in certain respects. An illustration of one of these distinctions is those who are entitled to vote at the respective elections.

A primary "election" is not actually an election, but is merely one mode of nomination. This is apparent from a review of Section 55-1007, ACA 1939 which provides for a separate ballot for each party which has candidates for the various offices to be filled at the following general election. Section 55-1009, ACA 1939 provides that only those registered, qualified electors are entitled

to a ballot whose registrations show either that they are affiliated with a party which is on the ballot, or that they are non-partisan.

From the foregoing paragraph it can be seen that there may be persons whose registrations show that they are affiliated with a party which has not put up any candidates in the primary, and hence have no ballot upon which to cast a vote at such primary. It follows that there is a distinct possibility that some qualified electors who have been properly registered may have no vote in the primary election.

Such a situation is not true, however, for voting on proposed constitutional amendments at a special election properly called for such purpose. Such an election must be a general election in the sense that all those who are properly registered, qualified electors have an opportunity to vote thereat, regardless of party affiliation. Our court has stated this principal repeatedly.

Allen v. State, 14 Ariz. 458, 130 P. 1114

Hudson v. Cummard, 44 Ariz. 7, 33 P. 2d 591

Estes v. State, 48 Ariz. 21, 58 P. 2d 753

The legislature, recognizing the principle, set it forth in statutory form as follows:

"Special elections-- All persons whose names appear on the register of voters for the last preceding general state and county election, and all persons who have registered on or before the third Saturday preceding any special primary or special general election, shall, if otherwise qualified, be entitled to vote at any such special election authorized by law; \* \* \* "  
(Section 55-221, ACA 1939)

"Qualified electors.-- All persons whose names appear on the register for the last preceding general election, and all persons who have registered under any subsequent registration, shall, if otherwise qualified, be deemed to be qualified electors for any purpose, for which such qualification is required by law." (Section 55-223, ACA 1939)

It is our opinion that a regular primary election may not afford a vote to all "qualified electors" of the state, whereas a special election for voting on proposed constitutional amendments must afford a vote to all "qualified electors". It follows

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Yavapai County Attorney

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that the subjects of the two elections to which you refer must appear on separate ballots.

Trusting the foregoing will serve to answer your inquiry,  
we are

Very truly yours,

FRED O. WILSON  
Attorney General

WILBERT E. DOLPH, JR.  
Assistant Attorney General

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