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FILE NO. S-659

ELECTIONS:
Propositional Issues

Honorable A. Randolph Comba
State's Attorney
Bureau County
Room 200 - Court House
Princeton, Illinois 61356

Dear Mr. Comba:

I have your letter of recent date wherein you state:

"Illinois Revised Statutes, Chapter 34, Section 859.1, provides in regards to an election for merit system of Sheriff's deputies: 'cause the question to be submitted to the electors of the county, at a special or general election specified in such ordinance, in accordance with the provisions of Section 28-3 of The Election Code'.

I have studied the definitions of special and regular elections as provided for in The Election Code, and wish your opinion as to whether a primary election to be held in March, 1974, constitutes a special or general election."

Section 1-3 of "The Election Code" (Ill. Rev. Stat. 1971, ch. 46, par. 1-3) provides the definition of "general election" and "special election" as follows:

"3. 'Special election' means an election, either general or municipal, not regularly recurring at fixed intervals, irrespective of whether it is held at the same time and place and by the same election officers as a regular election.

4. 'General election' means a regular election for the choice of a national, state, judicial, district or county officer."

The Illinois Supreme Court has held that a primary election is not a general election. In People v. Emerson, 333 Ill. 606, the court stated as follows:

"A general election is in obedience to the mandate of the constitution, or of a statute authorized by it, that certain officers be elected at certain times, and that all qualified voters of the district or county or of the State shall be permitted to participate in such election, while a primary law casts no obligations on parties to nominate, though if they do nominate they are required to do so according to the regulations of the Primary act. It must be said, therefore, that a primary is an election only in the qualified sense that it is moulded, in general, on the plan of an election and is conducted as an election is conducted, but for the purpose, only, of selecting candidates of a political party, with the right in no one else to participate therein."

Even though I held that a primary election is not a regular election (1970 Op. Atty. Gen. No. S-119, 7), it is clear from the definition of "special election" that because a primary is a regularly recurring election at fixed intervals, as provided by statute, it is also not a special election. I, therefore, am in agreement with an Opinion of a prior Attorney General who stated:

" * * * a primary election is in fact not an election, either general or special, as that term, when not prefaced by the word 'primary,' is defined in the Primary Act itself, and its purposes are not for the election of National, State, judicial, district or county officers, but merely a method of nominating candidates for such offices."

1915 Op. Atty. Gen. 299, 300.

(However, this does not mean there cannot be special primary elections.)

I believe your real concern is whether or not an election in regard to the adoption of the merit system of Sheriff's deputies may be held at the same time as a primary election. As you stated, the statute provides that in specific circumstances the county board shall, by appropriate ordinance, cause the question to be submitted to the electors

of the county at a special or general election specified in the ordinance. It is clear under the definition of special election that because the particular question to be voted on is not one regularly recurring at fixed intervals, the election will be a special election whenever it is held. (See also Renneker Co. v. South Park Comra., 332 Ill. 393.) The statute authorizes the question to be submitted at a special election specified by the county board.

I see no reason why the board could not specify that the special election be held at the same time as a primary election. The statute does not specifically prohibit the holding of the election at the same time as a primary election; the holding of special elections at the same time as primary elections is nowhere specifically prohibited by statute; and there is no public policy against the holding of these elections at the same time. The Illinois Supreme Court in The People v. Kerner, 19 Ill. 2d 506, specifically approved the procedure. There the court held valid a special primary election for nomination of candidates to fill a vacancy in a county judgeship at the same time as the regular judicial election. The court stated at page 512:

"Respondent also contends that holding the special primary election at the same time as the regular judicial election would require the electors to openly declare their party affiliation before voting for judges which would destroy the secrecy of the ballot and void the election. However, an elector could vote only in the judicial election and is not required to request the special primary ballot. Furthermore, even if a party primary ballot was taken, this would not preclude the elector from voting, in the judicial election, for a judge who was a candidate of a different political party. Consequently, such procedure would not destroy the secrecy of the ballot or render the writ of election void."

In conclusion, I, therefore, am of the opinion that a primary election is neither a special election nor a general election, and further, that a special election, unless otherwise specifically prohibited by statute, may be held at the same time as a primary election.

Very truly yours,

A T T O R N E Y G E N E R A L