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CONSTITUTION: General Election defined.

ELECTIONS: Initiative Petition
Amendments to Constitution
Vacancies in office of circuit judge
Precinct Delegates

The term "general election," as it is used by the people in Const. 1963 art. 2, § 9, art. 12, § 1, § 2, and art. 6, § 23, means the general election for national, state, county and township offices held on the first Tuesday after the first Monday in November in each even-numbered year or on such other date as members of the congress of the United States are regularly elected as required by the people in Const. 1963, art. 2, § 5.

Legislation proposed by initiative petition of the people may not be submitted to them for their approval or rejection at the "odd year general election," provided by the legislature in 1970 P.A. 239.

Constitutional amendments proposed by the legislature to be voted upon at the "next general election" may not be submitted to the people for their vote at such "odd year general election." The legislature is authorized to direct a special election for the vote of the people on a constitutional amendment proposed by the legislature to coincide with the date of such "odd year general election."

A constitutional amendment proposed by the petition of the people may not be submitted to the electors at such "odd year general election."

Vacancies in the office of circuit judge may not be filled at such "odd year general election."

The legislature may enact legislation for election of precinct delegates to be held at the same time as such "odd year general election."

No. 4725

March 10, 1971.

Honorable Richard H. Austin
Secretary of State
Treasury Building
Lansing, Michigan

Honorable Alfred Sheridan
State Representative
The Capitol
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Honorable Thomas Guastello
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Honorable Jackie Vaughn III
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Honorable Philip Mastin
State Representative
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You have requested my opinion on a number of questions, each pertaining to the meaning of the term "general election" as it was ratified by the people in various provisions of the Michigan Constitution of 1963, particularly in art. 2, § 9, as it relates to submission of a law proposed by

the people by initiative petition to the people for approval or rejection; art. 12, § 1, as it relates to constitutional amendments proposed by the legislature; art. 12, § 2, as it relates to constitutional amendments proposed by initiative petition of the people; and art. 6, § 23, as amended, which provides for the filling of vacancies of the office of judge of any court of record or district court at the "general election." Because of my opinion responding to your inquiries requires definition of the term "general election" as it is found in these provisions of the Michigan Constitution of 1963, your questions have been collected and will be answered in this opinion.

Your questions are as follows:

1. May legislation proposed by initiative petition of the people be submitted to the people for their approval or disapproval at an "odd year general election?"
2. May a constitutional amendment proposed by the legislature be submitted for vote of the people at the "odd year general election" as the "next general election" under art. 12, § 1?
3. May a constitutional amendment proposed by the petition of the people be submitted to the electors at the "odd year general election?"
4. Are vacancies in the office of circuit judge required to be filled at the "odd year general election?"
5. May political party delegates, commonly referred to as precinct delegates to district and county conventions, be elected at the November, 1971 "odd year general election?"

Your questions have been prompted by the recent enactment of 1970 P.A. 239, which adds certain sections to the Michigan election law, being 1954 P.A. 116, M.C.L.A. 168.1 et seq.; M.S.A. 6.1001 et seq. The sections added are numbered 644a - 644-1, being M.C.L.A. 168.644a - 168.644-1; M.S.A. 6.1644(1) - 6.1644(12).

Section 644a provides for an "odd year general election" to be held on the Tuesday succeeding the first Monday in November in every odd numbered year. Thus, the first "odd year general election" will be held on November 2, 1971.

The "odd year general election" provided for by the legislature in 1970 P.A. 239, supra, is, by no means a state-wide general election. A cursory reading of the statute compels the conclusion that such an election is required to be held only in some but not all of the cities in Michigan on November 2, 1971. A general state-wide election on such a date in the odd year or in any odd year thereafter must await the approval by the people of an appropriate constitutional amendment to allow the election of circuit, probate and district judges. This is clearly demonstrated by an examination of the provisions of 1970 P.A. 239, supra.

The public officers to be elected at such "odd year general election" are:

1. All judicial officers other than justices of the supreme court and judges of the court of appeals, such requirement to have legal effect only after a constitutional amendment is adopted authorizing the election of judges at odd numbered years elections.

2. All elected city officers, including municipal judges, except as otherwise provided in the act. See § 644c.

Section 644j provides that the "odd year general election" shall not apply to the election of such city officers of a home rule city having a charter in existence on the effective date of the act which requires the election of city officers annually on the Tuesday succeeding the first Monday in November of each year, nor to any home rule city whose charter provides that its governing body shall be elected on a partisan basis on a date other than November of the odd numbered year. Further, § 644-1(1) expressly authorizes all cities, except those affected by § 644j to provide by resolution within 30 days after the effective date of 1970 P.A. 239 to continue to hold their elections as required by their respective charter.¹

Reading these provisions together, it must be concluded that in certain cities in Michigan in November, 1971, an election will be held to elect city officers, including municipal judges. It is equally clear that until such time as the people of this state amend the constitution to authorize the election of circuit judges, probate judges and district judges at any election other than the general election, as provided in art. 2, § 5, there will be no state-wide "odd year general election" in Michigan.

*The meaning of the constitutional
term "general election"*

The people have retained the power to enact legislation by initiative petition, Const. 1963, art. 2, § 9. It provides, in pertinent part, as follows:

"The people reserve to themselves the power to propose laws and to enact and reject laws, called the initiative, and the power to approve or reject laws enacted by the legislature, called the referendum . . .

"If the law so proposed is not enacted by the legislature within the 40 days, the state officer authorized by law shall submit such proposed law to the people for approval or rejection at the next *general election* . . ." (Emphasis supplied)

Amendments to the Constitution may be proposed by the legislature as set forth in Const. 1963, art. 12, § 1:

"Amendments to this constitution may be proposed in the senate or house of representatives. Proposed amendments agreed to by two-thirds of the members elected to and serving in each house on a vote with the names and vote of those voting entered in the respective journals shall be submitted, not less than 60 days thereafter, to the electors at the next *general election* or special election as the legislature shall direct . . ." (Emphasis supplied)

The people may also propose amendments to the Constitution by petition and any amendment proposed by the people

"shall be submitted, not less than 120 days after it was filed, to the electors at the next *general election*." (Emphasis supplied) Const. 1963, art. 12, § 2.

¹ The Secretary of State has presently in his possession the resolutions of some 90 cities that have elected to exempt themselves from 1970 P.A. 239, pursuant to § 644-1(1) thereof.

The people have provided for the filling of vacancies in the office of circuit judge in art. 6, § 23, as amended by the people on August 6, 1968 at "the first *general election* held after the vacancy occurs . . ." (Emphasis supplied)

In responding to your inquiries particular consideration must be given to the aforesaid provisions of the Michigan Constitution of 1963, relating to elections for the submission of laws proposed by initiative petitions, amendments to the Constitution proposed by the legislature, amendments to the Constitution proposed by the people and for the filling of vacancies in the office of circuit judge, as well as the controlling parts of the Constitution.

The constitutional term "general election" also appears in other portions of the Constitution. In art. 5, § 2 the people have provided that the governor, lieutenant governor, secretary of state and attorney general shall be elected for four-year terms at the *general election* in each alternate even-numbered year. In the Schedule and Temporary Provisions of the Constitution the people have provided in § 5 that the governor, lieutenant governor, the secretary of state, the attorney general and state senators shall be elected at the general election in 1964 to serve for two-year terms, and the first election of such officers for four-year terms under the Constitution of 1963 shall be held at the general election in 1966.

The question of general revision of the Constitution must be submitted to the people at the general election to be held in 1978 and each 16th year thereafter, although the time for submission of a revised Constitution or amendments to the present Constitution is to be fixed by the convention as set forth in art. 12, § 3. In art. 9, § 15, the people have authorized long term borrowing of money by the state upon acts adopted by two-thirds vote of the members elected to and serving in each house of the legislature and approval of the electors at any "general election."

All of these references to the "general election" must be considered in the context of art. 2, § 5, which provides as follows:

"Except for special elections to fill vacancies, or as otherwise provided in this constitution, all elections for national, state, county and township offices shall be held on the first Tuesday after the first Monday in November in each even-numbered year or on such other date as members of the congress of the United States are regularly elected."

The term "general election," used repeatedly by the people in the various provisions of the Michigan Constitution of 1963, and particularly in the controlling provisions pertinent to your specific inquiries, can have no other meaning than the biennial election required to be held on the first Tuesday after the first Monday in November of each even-numbered year as mandated by art. 11, § 5. *People v. Palmer*, 91 Mich. 283, 286 (1892).

The constitutional term "general election" was a part of Const. 1850, art. 20, § 1, § 2. As originally adopted by the people the Michigan Constitution of 1850 required that amendments proposed by the legislature be submitted to the electors at the next "general election." The question of the meaning of the term "general election" as it appeared in Const. 1850, art. 20, § 1 came before the Michigan Supreme Court for its determination

in *Westinghausen v. The People*, 44 Mich. 265 (1880). The court examined the various provisions of Michigan Constitution of 1850 and concluded that:

“. . . under the Constitution there was only one election which was ever referred to as a general election, and that the term was used as identical with the November election, which was previously annual, and thereby made biennial. That was the only election held simultaneously throughout all the State for officers to represent the whole State. At that election the governor and all the State officers throughout all the State, and the senators and representatives in the State Legislature, except in the Upper Peninsula, were chosen . . .

“It is hardly necessary to say that subsequent legislation could not change the meaning or effect of any part of the Constitution. That instrument can only be changed by the combined action of the Legislature and the people. If the Legislature could, by merely calling things by particular names, alter constitutional provisions, it would be quite unnecessary to consult the people on the subject of amendments. . . . Of course, the Legislature can make their own definitions for statutory purposes, but this would not change the constitutional definition, or make it apply to any election not within the constitutional contemplation.” pp. 269, 271.

The court therefore ruled that the language of art. 20, § 1 of the Constitution, taken with all the various other provisions which refer to general elections, very plainly referred to the biennial fall election when state officers were elected to represent the whole state.

This was also the holding in *Carton v. Secretary of State*, 151 Mich. 337 (1908), where the majority of the court ordered submission of the proposed revised constitution for vote of the people at the November biennial general election as required by the provisions of art. 20, although the justices divided on the question as to the power of the legislature to fix the date of the submission of the revised constitution to a vote of the people.

When judicially construed language of a prior constitution is incorporated into a revised constitution, it will be presumed to have been incorporated with knowledge of the previous judicial construction. *Richardson v. Secretary of State*, 381 Mich. 304 (1968).

This presumption is also confirmed as the clear intent of the framers of the Constitution of 1963. Two efforts were made by the delegates to the convention to amend art. 2, § 5 of the Michigan Constitution of 1963 to authorize a general election in November of each year. The first effort to amend the then proposal 58e failed by vote of 37 yeas, 75 nays. See 2 Official Record, Constitutional Convention 1961, pp. 2242-2247. Note particularly the comment of Delegate Woolfenden that the proposed section “provides that all elections shall be in November as a constitutional mandate . . .” (p. 2243, *ibid*). The second effort to amend was made also without success by vote of 55 yeas, 71 nays, except on the second attempt the legislature was authorized to provide by law for elections to be held for certain enumerated state and local officers on the first Monday in November of the odd-numbered years. See 2 Official Record, Constitutional Convention 1961, pp. 3078-3079.

The Address to the People, explanatory to art. 2, § 5, stated that the section eliminated the biennial spring election and required

“that major state-wide elections shall be held on the first Tuesday after the first Monday in November in each even-numbered year, or such other date as U.S. members of congress are elected. . . . It permits special elections to fill vacancies and city, village and school elections to be held at other times as prescribed.

“ . . . Its elimination is expected to cause wider citizen participation in the fall election of officials ranging from supreme court to township officers.

“Elimination of the spring vote will reduce state-wide election costs by an estimated \$1 million annually.”

2 Official Record, Constitutional Convention 1961, p. 3366.

The constitutional term “general election” appearing in other state constitutions has been defined to mean the constitutionally defined state-wide general election for state officers. The constitutional requirement cannot be circumvented by calling a special election a general election, the type of election being established by the function it performs and not by the name by which it is called. *Cohen v. Governor*, 255 A2d 320 (Md. 1969); *Bolin v. Superior Court*, 333 Pac. 2d 295 (Ariz. 1958); *Plummer v. Gaines*, 422 Pac. 2d 17 (Wash. 1966); *In re Advisory Opinion*, 169 SE 2d 697 (N.C. 1969).

Therefore it is my opinion that the term “general election” as used by the people in Const. 1963, art. 2, § 9, art. 12, § 1, § 2, and art. 6, § 23, has a constitutionally defined, fixed and uniform meaning, that is, the election for national, state, county and township offices to be held on the first Tuesday after the first Monday in November in each even-numbered year or on such other date as members of the congress of the United States are regularly elected as required by the people in art. 2, § 5.

Applying the aforesaid definition of the constitutional term “general election” as it appears in Const. 1963, art. 2, § 9, art. 12, § 1, § 2, and art. 6, § 23 to the questions that you have posed, the following conclusions must be drawn:

1. Should it be required that the secretary of state submit legislation proposed by initiative petition by the people to the people for their approval or rejection, there is no authority for submission to the people at an “odd year general election,” provided by the legislature in 1970 P.A. 239. It is my opinion that the proposed legislation must be submitted to the people at the general election to be held in November of 1972 as required by the people in art. 2, § 5.

2. A constitutional amendment proposed by the legislature to be submitted for vote of the people at the “next general election” under art. 12, § 1 may not be submitted to the people for their vote at such “odd year general election.” However, the legislature possesses constitutional authority to designate a special election for the purpose of submission of such proposed constitutional amendment provided that the date of such special election shall not be less than 60 days thereafter, and such special election

could be held at the same time as the "odd year general election" if the legislature so directs.

3. There is no authority for submission of a proposed constitutional amendment by petition of the people to the electors at such "odd year general election." Proposed constitutional amendments submitted by petition of the people must be voted upon by the electors at the general election required by the people under art. 2, § 5.

4. There is no authority for vacancies in the office of circuit judge to be filled at such "odd year general election." Vacancies in the office of circuit judge must be filled at the general election held in November of 1972 as required by the people in art. 2, § 5.

5. Precinct delegates are officers of political parties, not public officers. O.A.G. 1928-30, p. 195. The Michigan Constitution of 1963 neither provides for their election nor restricts the time of holding elections for such purpose. The matter is entirely one for the legislature. There is no restriction upon the power of the legislature, should it see fit, to enact legislation to require the holding of an election for the purpose of electing precinct delegates, to be held at the same time as "odd year general election" when city officers are elected in certain cities in Michigan.

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CONSTITUTIONAL LAW: Equal Protection of the laws.

PUBLIC OFFICES & OFFICERS: Qualifications for.

SCHOOL DISTRICTS: Qualifications for office of member of a board of education.

The statutory requirement of ownership of real or personal property assessed for taxes as a qualification for the office of member of a board of education, as provided in Sec. 492 of the school code of 1955, is unconstitutional as violative of the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States.

No. 4723

March 24, 1971.

Hon. Bill S. Huffman
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You have requested an opinion determining whether a duly elected school board member who has sold his home in the school district from which he was elected may continue as a school board member in the district. The school board member involved is presently living as a tenant in the home which he previously owned.

1955 P.A. 269, as amended, being M.C.L.A. 340.1 et seq.; M.S.A.