

Subject

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*Elections - Candidates*  
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September 27, 1974

Opinion No. 74-328

Mrs. Elwill M. Shanahan  
Secretary of State  
Statehouse  
Topeka, Kansas 66612

Dear Secretary Shanahan:

Under § 1 of chs. 137 and 138, L. 1974, a proposition for the nonpartisan selection of district court judges is to be

"submitted to the qualified electors of each judicial district at the general election held in November of 1974 for adoption or rejection, as authorized by section 6 of article 3 of the Kansas constitution."

You inquire, first, if official notice must be given by publication of this election. Concerning an election, § 6 of Article 3 states only thus:

"The legislature shall provide a method of nonpartisan selection of district judges and for the manner of submission and resubmission thereof to the electors of a judicial district. A nonpartisan method of selection of district judges may be adopted, and once adopted may be rejected, only by a majority of electors of a judicial district voting on the question at an election in which the proposition is submitted."

The first question presented is whether, although the proposal is to be submitted at the time of the general election in November, the vote on the question constitutes a special question submitted election of which notice must be given. K.S.A. 25-2502(a) defines a "general election," in pertinent part, as "the election held on the Tuesday succeeding the first Monday in November of even numbered years...." This election is that called for and required by K.S.A. 25-101, at which the officers enumerated therein are elected. K.S.A. 25-2503(g) states thus:

"'Questions submitted election' means any election at which a special question is to be voted on by the electors of the state or a part of them."

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Thus, the election upon the proposed nonpartisan selection of judges is a question submitted election albeit is held at the same time as the general election.

In *State ex rel. Beck v. Allen County Commissioners*, 143 Kan. 898, 57 P.2d 450 (1936), the court considered the validity of a special election in Allen County on the question of adopting the county road unit system, held at the time of the general election. The court stated thus:

"[E]very law providing for an election necessarily implies the giving of a reasonable official notice. As stated, the law required the county commissioners to submit the question involved to the electors. The giving of notice of the election was therefore implied.

\* \* \*

Voters are presumed to know the date of general elections, as they are fixed by statute. This is not true of special elections. As to the latter, the voter expects and has the right to receive official notice of the date and issues to be submitted. For this reason it is the general rule, and this court has frequently held, notice prescribing [sic] for special elections is mandatory. [Citations omitted.]

While the county road unit system statutes prescribed no definite notice for the election, a reasonable official notice is implied. It was not given, and the election was therefore not valid." [143 Kan. at 899-900, 901-902.]

It is, accordingly, our opinion that reasonable official notice must be given of the election upon the nonpartisan selection of judges to be held in each judicial district at the time of the general election in November.

The questions follow, then, what notice should be given, by whom, and under what authority. K.S.A. 25-105 states thus:

"It shall be the duty of the county clerk, and he is hereby required, to give public notice by publication in the official county paper, at least fifteen (15) days before the holding of any general election, except as otherwise provided by law, of the time of holding of such election, and the name of each person nominated for any public office at that time to be chosen, except in the case of special elections, when then (10) days' notice shall be given...."

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In *State ex rel. Beck v. Allen County Commissioners, supra*, the court expressly declined to decide whether an election whether to adopt a county road unit system was a "special election" within the meaning of this statute. The court decided, however, that reasonable official notice must be given, and we believe that the same rule applies to this election, i.e., that reasonable official notice must be given. In our view, publication notice appearing fifteen days before the election, at the same time as the official notice of the general election of candidates, would be clearly and eminently reasonable, and we recommend that such notice be given. It is the responsibility of the county election officer to conduct the election, and it is, accordingly, the responsibility of that officer to make the official notice, the cost thereof to be borne by the county.

The notice must inform the voters of the issue to be submitted, and for this purpose, we recommend that the notice contain the question to be submitted, as set out in section 1 of chs. 137 and 138, L. 1974. The notice must, in addition, advise the electorate of the date and hours of the election.

It is hoped that if the above steps are followed, that the election will be adequately noticed so as to forestall any subsequent attack on the validity of the election in any judicial district based upon any lack of reasonable official notice.

Very truly yours,

VERN MILLER  
Attorney General

VM:JRM:tp