



WILLIAM J. SCOTT

ATTORNEY GENERAL
STATE OF ILLINOIS
500 SOUTH SECOND STREET
SPRINGFIELD

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CONSTITUTIONAL LAW:
Elections
Declaration of Elected
Executive Offices

Honorable John W. Lewis
Secretary of State
213 State House
Springfield, Illinois 62706

Dear Mr. Lewis:

I have your recent letter of October 31, 1972 wherein you state in part:

" * * * (1) The authority of the Speaker of the House and the Legislature to canvass the votes for State Officers, contained in the 1870 Constitution, has been eliminated from the 1970 Constitution, which has substituted a provision that the returns 'for executive offices shall be sealed and transmitted to the Secretary of State or other person or body provided by law who shall examine and consolidate the returns', and

(2) The statute adopted under the former Constitution still remains in effect and still provides for returns to be made to the Secretary of State, and to the Speaker of the House, and

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(3) No authority is given to the Speaker of the House or to the Legislature by either the Constitution or the statute to canvass the votes.

I would like your opinion on the following questions:

1. To whom shall the county clerks and election commissions make the returns?
2. Who shall 'examine and consolidate the returns' under the provision of Sec. 5 of Article V of the 1970 Constitution?
3. Who shall 'declare elected' the candidate with 'the highest number of votes'?

Section 5 of article V of the Illinois Constitution of 1970 provides in part:

"The election returns for executive offices shall be filed and transmitted to the Secretary of State, or other person or body provided by law, who shall examine and consolidate the returns. The person having the highest number of votes for an office shall be declared elected. * * *"

Section 5 contains procedures for canvassing votes and determining election contests, relative to the elected constitutional executive officers. "An administrative canvass, drawing of lots to break ties, and judicial determination of contests would all be substituted for the present action by a joint session of the General Assembly". 6th Ill. Const. Con., Committee Proposals, Vol. 6, p. 366.

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Section 5 replaces section 4 of article V of the Illinois Constitution of 1870. Section 4 (supra) contained a procedure for the certification of the Governor, Lieutenant Governor, Secretary of State, Auditor of Public Accounts, the Attorney General, Treasurer and Superintendent of Public Instruction. This procedure required that the returns of every election for the above named officers be transmitted by the returning officers to the Secretary of State, who in turn presented the returns to the Speaker of the House immediately after the organization of the House. The returns were read in the House of Representatives before a joint session of the General Assembly and the persons having the highest number of votes for the above named offices were declared duly elected by the General Assembly.

In changing from the procedures in section 4 of the 1870 Constitution (supra), the Committee on the Executive thought that the canvass and declaration of results were routine matters that caused an unnecessary diversion of legislative time. 6th Ill. Const. Con., Committee Proposals, Vol. 6, pp. 366-7.

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The Committee on the Executive stated:

"An important point to bear in mind is that under the existing Constitution there is no administrative or judicial procedure for handling disputed elections for statewide executive office. The election authorities merely collect the results and make them available to the General Assembly for the canvass. The revisions we advance will eliminate the current void by transferring the canvassing function away from the legislature, so that administrative actions become subject to court review." 6th Ill. Const. Con., Committee Proposals, Vol. 6, p. 368.

From a reading of the verbatim transcripts of debates of the 6th Illinois Constitutional Convention, the intent of the delegates in regard to section 5 (supra) was that the Secretary of State canvass, examine and total the election returns and declare the winner. This intent is best reflected in the following statement by Delegate Young:

"We are stating in the section that unless the legislature determines otherwise, the secretary of state shall canvass, examine, and total the returns of the election and declare the winner. Right now-as it is now-they go to the secretary of state; he can do nothing. He sits and waits until the house is organized, and then he presents them to the speaker of the house, who canvasses the returns before a joint session of the house and senate." 6th Ill. Const. Con., Verbatim Transcripts, Vol. 3, p. 1287.

In presenting section 5 to the delegates, Delegate

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Young spoke in behalf of the Committee on the Executive. In his explanation of section 5 to the delegates, Young stated:

"It gives to the legislature the right to allow the Secretary of State to canvass these results and announce the winner or for them to set up another body to do this." 6th Ill. Const. Con., Verbatim Transcripts, Vol. 3, p. 1284.

In the Constitutional Commentary found in Smith-Hurd, Annotated Statutes (S.H.A. Const., art. V, sec. 5, Constitutional Commentary), the following language relative to section 5 (supra) is found:

"Section 5 replaces Section 4 of Article V of the 1870 Constitution. The Secretary of State, or such other person or such body as is provided by law, is charged with the administrative responsibilities of canvassing the election returns for the executive offices. The person having the highest number of votes shall be declared elected by the Secretary of State or by the person or body provided by law."

Therefore, it is my opinion that under section 5 (supra) and current statutes, it is the duty of the Secretary of State to examine and consolidate the election returns and to declare the winners of the elections for the various state executive offices.

As you are aware, the mechanics for the Secretary of State to obtain the results of the local canvass for the state

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executive offices exists in article 22 of the Election Code.

Ill. Rev. Stat., 1971, ch. 46, par. 22-1, at seq.

Section 22-5 of the Election Code, (Ill. Rev. Stat., 1971, ch. 46, par. 22-5, reads as follows:

"Immediately after the completion of the abstracts of votes, the county clerk shall make two (2) correct copies of the abstracts of votes for Governor, Lieutenant Governor, Secretary of State, Auditor of Public Accounts, Treasurer, Attorney General, Superintendent of Public Instruction and clerk of the Supreme Court, both of which said copies he shall envelope and seal up, and endorse upon the envelopes in substance, 'Abstracts of votes for State officers from County'; and he shall address one of the envelopes containing said copies or abstracts of votes for State officers to 'The Speaker of the House of Representatives', and the other he shall address to 'The Secretary of State'."

Section 22-8 and section 22-9 (Ill. Rev. Stat., 1971, ch. 46, pars. 22-8 and 22-9) contain provisions for the transmission of abstracts of votes to the Secretary of State in municipalities operating under article 6 of the Election Code.

Therefore, in answer to your first question, the county clerks and election commissions shall make the returns in accordance with the above statutory provisions to the Secretary of State. In answer to your second question, it is

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my opinion that section 5 (supra) imposes the duty upon the Secretary of State "to examine and consolidate the returns" unless otherwise provided by law. In answer to your third question, the Secretary of State is to "declare elected" the candidate with "the highest number of votes."

Please note that section 22-5 of The Election Code (supra) provides that one copy of the abstract of votes be placed in an envelope and addressed to the Speaker of the House of Representatives. It is not necessary to here hold that such provision either is or is not in conflict with the Illinois Constitution of 1970. (See Ill. Const. 1970, Transition Schedule, sec. 9) It is sufficient that such provision does not give the legislature power to exercise the official function of examining and consolidating the returns and declaring the winner under the current status of the statutes and the Illinois Constitution. If the Speaker is entitled to receive copies of the abstract of votes it can only serve for informational purposes.

Very truly yours,

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