

Why the constitutional convention question must appear on the 2014 ballot

“If the question be not submitted to the people at some time during any period of ten years, the secretary of state shall submit it at the next general election following said period.”

- Rhode Island Constitution, Article 14, Section 2.

It has been argued that the constitutional convention question will not appear on the 2014 ballot unless the General Assembly passes a resolution that submits this question to voters. In this scenario, the “ten-year” clause would only take effect at the 2016 election.

However, there is strong evidence indicating that the question must appear on the 2014 ballot regardless of the General Assembly’s decision to pass a resolution. The question was last submitted to voters on November 2, 2004 and the ten-year period will end on November 2, 2014. The next general election following that period falls on November 4, 2014.

The debate hinges on the interpretation of “the next general election” and in 1994 this exact same issue was addressed. Election Day in 1994 occurred just two days after the ten-year period elapsed. Then-Secretary of State Barbara Leonard placed the question on the 1994 ballot even though the General Assembly had not passed a resolution submitting the question to voters.

I visited the State Archives to review any documents related to Leonard’s decision. Specifically, I reviewed the “Department of State Records of the Office of the Secretary of State Barbara M. Leonard 1993-1994”. In a folder titled “Constitutional Convention H-9254”, I discovered a letter sent to Leonard’s office from William E. Smith of the law firm Edwards & Angell (see Attachment A). The letter, dated July 1, 1994, begins:

This letter is in response to your inquiry regarding the interpretation of Article 14, Section 2 of the Rhode Island State Constitution. Specifically, you have asked whether Section 2 requires the Secretary of State to submit the question “Shall there be a convention to amend or revise the Constitution?” to the voters at the next general election to be held on November, 1994. It is our opinion, based on a review of the applicable constitutional provisions and the legislative history, that Section 2 requires the Secretary of State to submit the question to the voters at the upcoming general election.

Smith explains that the electorate approved a constitutional convention on August 7, 1973 and ratified Article 14, Section 2 on November 6, 1973. Over the next ten years, the General Assembly did not pass a resolution submitting the question to voters. Smith continues:

The next general election following the 10-year period was held on November 6, 1984. As required by Article 14, Section 2, the Secretary of State placed the question on the ballot during this general election. The authority for doing so, Article 14, Section 2, was cited on the ballot question...This is significant when one compares this stated authority with the other questions on the ballot which cited a resolution of the General Assembly.

In 1994, Election Day would fall on November 8, ten years and two days after Election Day in 1984. This calendar quirk is critical. The letter concludes:

Both the plain language and the legislative history demonstrate that the question "Shall there be a convention to amend or revise the Constitution?" should be placed on the November 1994 ballot. The question was last submitted to the voters on November 6, 1984. The 10-year period will elapse on November 6, 1994. The next general election following the 10-year period will be held on November 8, 1994. The General Assembly thus far has failed to pass a resolution submitting the question to the voters. Therefore, by virtue of Article 14, Section 2, the Secretary of State must submit the question to the voters during the next general election to be held on November 8, 1994.

The same situation will occur in 2014. The question was last submitted to the electorate on November 2, 2004, the 10-year period will elapse on November 2, 2014, and the next general election will be held on November 4, 2014. These situations show that Article 14, Section 2 is subject to the timing of Election Day, which occurs on the Tuesday after the first Monday in November.

The 1994 decision establishes a strong precedent for 2014. And as Smith's letter states, "there is no case law which supports a contrary interpretation of Article 14, Section 2."

The Constitution does not grant the Secretary of State the authority to subjectively determine how many years and days must pass before "the next general election" can be considered the next general election. If the General Assembly does not pass the resolution, the Rhode Island Constitution requires that Secretary of State Mollis place the question on the 2014 ballot.