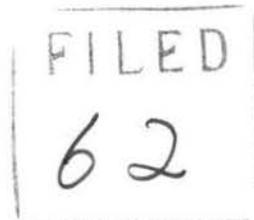


STATE SOIL DISTRICTS COMMISSION: In the election of soil district supervisors in a previously organized district balloting may be wholly by mail according to rules and regulations promulgated by the State Soil Districts Commission

October 5, 1949



Missouri State Soil Districts Commission
Columbia, Missouri

Gentlemen:

In regard to your request for an official opinion of this office, your request reads as follows:

"The soil conservation districts in Missouri have been following the practice of voting for district supervisors by mail. The procedure has been for the secretary of the district supervisors to send ballots on post cards, carrying at least three candidates for the office of supervisor, to each land representative on record in the district. The land representative is requested to indicate which of the candidates he chooses for district supervisor, or write in any additional names if he desires, and return this ballot to the secretary of the supervisors. This procedure gives each land representative in the district an opportunity to vote on supervisors. However, the question has been raised as to the legality of this method of electing supervisors. I would appreciate having your opinion regarding this question."

Your Commission is authorized and empowered under the Soil Conservation Districts Law, 1943, Laws of Missouri, page 842, Section 3, in Subsection 4b to formulate and fix the rules and procedures for fair and impartial selection of soil district supervisors, and at Section 5 of the same Act the law provides that a board of soil district supervisors to act as a local governing body of said soil district shall be composed of five members and that four of said members shall be elected by the majority vote of land representatives under rules and procedures formulated by the Soil Commission and that a soil supervisor shall receive no compensation for his services, but he shall be entitled to his expenses, including travel expenses necessarily incurred in the discharge of his duties as a member of this board.

You have submitted instructions or rules that you have formulated for electing soil district supervisors by mail in previously organized

soil districts. The instructions should be designated as rules and regulations for the election of soil district supervisors. Your instructions provide for the mailing to each land representative of a ballot printed on a postal reply card which provides for the payment of postage in order to vote. The instructions do not require that the ballots be numbered. The instructions do contain the voting instructions and provide for instructing the voters on how to vote on the business reply card or ballot. Your ninth instruction provides that on the day following the final date for getting in the votes, the votes for all areas should be tallied on a tally sheet like the one attached by two or three judges appointed by the extension sponsoring board.

The 1945 Constitution of the State of Missouri provides in Article VIII, Section 3, thereof, that all elections by the people shall be by ballot or by any mechanical method prescribed by law. Every ballot voted shall be numbered in the order received and its number recorded by the election officers on the list of voters opposite the name of the voter. All election officers shall be sworn or affirmed not to disclose how any voter voted. Section 7 of Article VIII of said Constitution provides that the qualified electors of the state who are absent, whether within or without the state, may be enabled by general law to vote at all elections by the people. This last section contemplates absentee voting by mail.

Section 3a of the Soil Conservation Districts Law, Laws of Missouri 1943, page 843, provides:

"Wherever in this Act a referendum is provided for and is used, it shall be conducted by secret ballot in such a manner that any person connected with, or any official of such referendum or election cannot know how any land representative votes. * * * *"

This reference is, of course, to the referendum on whether or not a soil district shall be organized or whether or not a previously organized soil district shall be disorganized. A referendum broadly speaking, is the reservation by the people of a state or local subdivision thereof of the right to have submitted for their approval or rejection, under certain prescribed conditions, any law or part of a law passed by the lawmaking body. State ex rel. Drain v. Becker, 247 S.W. 229, 1.c. 230; Words and Phrases, Vol. 36, page 619. The election of the supervisors would not be a referendum but an election of the managing officers of the soil district, but this section does show that the Legislature wishes the election to be a secret election. A referendum could not be held by the casting of ballots by mail because this section clearly indicates the ballot boxes shall be used as in any general election in this state.

Section 11524.2, Mo. R.S.A. provides for the application for an absentee war ballot to be voted in a general or special election by an absentee voter in military service and provides that the application may be by post card or any written request. Sections 11470 to 11478a of Mo. R.S.A. provides for the casting of absentee ballots by mail of qualified voters who are within the state of Missouri but absent from the county in which they are qualified to vote. House Bill No. 5 enacted by the 1949 Missouri Legislature provides that any person, except those in the armed services expecting to be absent from his county on any special, general or primary election day or is ill or physically disabled from going to the poll may vote an absentee ballot. Application for the ballot can be made in person or by mail. Section 11474 of this new law, which will become effective October 14, 1949, provides that an envelope containing the ballot shall be sent by mail by the voter, postage prepaid, to the officer issuing the ballot, or may be delivered in person. Section 11481 of this Act provides that this method of voting is in addition to the method now provided by statute in cases where the voter is present at the polling place in the county where he resides on the day of such election.

There is no constitutional or statutory provision in this state prohibiting the voting by ballot by mail. The election of soil district supervisors must be held according to the rules and procedures formulated by your Commission which will insure a fair and impartial election.

The Supreme Court of Colorado, en banc, held in *People ex rel. Cheyenne Soil Erosion District v. Parker et al*, 192 Pac.(2d) 417, l.c. 420, in a case involving the legality of a referendum on the question of the continuation of a soil erosion district in that state as follows:

"It is thoroughly settled that a district such as the one here involved, is a public corporation, but not a city, town or municipality within the meaning of the constitutional provision. The purposes of the district, as expressly set forth in the act, are, as the trial court expressly found, primarily of a private nature for the mutual benefit of the landowners of the district.* * *"

"We have heretofore shown that the relator is a public corporation and not a municipal corporation. The so-called election upon the question of adopting land use ordinances is not an election within the Constitutional provision, but is more in the nature of an

election held by the stockholders of a private corporation in the management of its affairs. The questions as to whether or not a voter at such election is a 'qualified elector,' whether he may vote by proxy, or whether such voter is a corporation or an individual, or whether he resides in Colorado or elsewhere, are wholly immaterial. The relator, as the trial court found, was primarily organized for the benefit of the owners of the land in the district. The owner's interests are in no way affected by their place of residence. They have a legal right to own real estate in Colorado regardless of their place of domicile and to take all legal means for the improvement and protection of such property. Their right to vote for or against the creation of a district or for or against the adoption of land use ordinances, springs from ownership of land."

* * * * *

"* * * Relator's counsel in this connection say in their brief: 'In the first place, the fundamental purpose of the Soil Conservation Act is to give to the people in any area within the state of Colorado a means or agency through which the damage to the soil and natural resources by reason of wind or water erosion can be minimized or eliminated.' If, as counsel says, the fundamental purpose of the act is to minimize and eliminate damage to land from soil erosion, the landowner, whether a corporation or an individual, and regardless of place of residence, has a legal right to a voice therein.* * *"

On the question of whether or not the rules are reasonable, I wish to call your attention to the fact that the election of the lawyer members of the Judicial Commission of the State of Missouri is by mail. The 1945 Constitution of Missouri at Article V, Section 29d, provides among other things "all such Commissions shall be administered, and all elections provided for under such section shall be held and regulated under such rules as the Supreme Court shall promulgate." This referred to the election of the lawyer members of the Judicial Commission which nominates three lawyers to be submitted to the Governor to fill any vacancy upon the appellate courts of this state. This Commission has six

members and a chairman who is the Chief Justice of the Supreme Court.

The Supreme Court of Missouri under the power granted to it by the Constitutional provision, cited above, provided for the election of the lawyer members to this Commission by ballots mailed to the clerk of the court of appeals of the appellate district in which the voter resides. Their rules (10.5) provides that twenty days before the election, the clerk shall mail at least one ballot to each member of the Bar in good standing residing in such appellate district and that he shall mail a separate card with each ballot placing thereon the same number that he places upon the accompanying ballot. On such card the voter shall write his residence address, signature, and mail or send it with his ballot to the clerk. Their rules provide that upon canvassing the ballots the clerk of the court of appeals shall place all ballots in one package and signatures cards in another and that they shall be retained for a period of six months and permit no one to inspect same except upon an order of the Supreme Court and that the clerk and canvassers shall not disclose how any voter cast his ballot except upon an order of the Supreme Court. The election of members to the Judicial Commission is an important election because the six members on that Commission represent all the voters of the State of Missouri in the nomination of candidates who may be appointed judges of the appellate courts of our state. The Supreme Court under its powers to make rules regarding the election of members of this Commission have found that voting by mail is a reasonable and expedient means of conducting the election. Therefore, upon the expression of the Legislature that absentee ballots may be cast by mail and that ballots by persons who are ill and unable to go to the polls may be cast by mail, and upon the fact that the Supreme Court of Missouri has established the procedure of voting by mail, this office is of the opinion that balloting by mail for the election of soil district supervisors, if the district has been organized, is a reasonable method.

Upon the question of whether or not balloting by mail provides a fair and impartial election I would like to point out that your instructions or rules for conducting the election by mail do not provide for the numbering of the ballots as required by the Constitutional provision cited above.

The case of *Stranghan v. Meyers*, 268 Mo. 580, l.c. 589, holds that "the word vote means suffrage, voice, or choice of a person for or against a measure or the election of any person to office." It also holds that the word ballot is the means or instrument by which a person votes. This case also holds (see page 591) that the purpose for numbering the ballots is to provide the means of contesting the elections and preserving evidence so that it may be used for this purpose. The casting of ballots by mail can be

as fair and impartial as casting ballots in polling places in person by the voter, provided means are established to insure that the ballots cast are voted by qualified voters and that not more than one vote is cast by a qualified voter. Since the office of the soil district supervisor does not pay a salary we assume that there is no spirited contest for the office by landowners in the district but your rules must provide that the ballots be numbered and a means be established for the identification of the voter who casts any certain ballot. We believe that the rules established by the Supreme Court of Missouri, Rule No. 10.5, for the election of members of the Judicial Commission by mail should be studied by you in formulating the rules for the election of supervisors by mail because their rules provide for the numbering of the ballots and the use of a separate signature card with the same number thereon as on the ballot mailed to the voter. Their rules provide that no ballot shall be counted unless cast by a member of the Bar in good standing and the qualifications specified by the Constitution. They determine from the signature card whether the ballot using that same number shall be opened and counted. If cast by a qualified voter, it is opened and counted.

Another test as to the fairness of the election would be the provision for the nomination of candidates for office of supervisor. Your rules or instructions do not contain a plain provision for the nomination of supervisors. The instructions for the nomination of supervisors are comingled with instructions for articles in the newspapers. Your rules for nominations should set forth as a definite rule how the candidates for supervisors must be nominated. The requirement that nominations may be made by petition of at least twenty-five farm-owners may be too high. The Supreme Court provides that nominations for candidates to be voted for membership on the Judicial Commission may be by petition signed by not less than twenty members of the Bar in good standing in such appellate district and that said petitions must be filed with the clerk not later than thirty days prior to the election. There are more lawyers in any appellate district in Missouri than there would be land representatives in any county with a soil district. Your rules should enable any reasonable number of land representatives to nominate a candidate for the office of supervisor in their part of the soil district.

Your instructions for the counting of the votes should be definite and provide that they should be counted by a definite number of canvassers or judges. Your instructions provide that they shall be counted by two or three judges. This is indefinite in that they might choose two or they might choose three judges.

Therefore, if your rules are amended to provide for the numbering of the ballots and for definite procedure to be followed in nominating candidates for the office of supervisor, and for a definite number of judges or canvassers to count the ballots and

to record the names of the voters who voted, then the election of the supervisors for the soil district would be fair and impartial in our opinion.

CONCLUSION

It is the opinion of this office that in the election of soil district supervisors of previously organized districts that votes may be cast wholly by mail by the land representatives of said soil districts provided that the ballots so cast by mail are properly numbered and counted and that same is all done in accordance with the rules and regulations promulgated by the State Soil Districts Commission.

Respectfully submitted,

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APPROVED:

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