

ELECTIONS:
CITY ELECTIONS:
CITIES, TOWNS AND
VILLAGES:

If the City of Kirksville schedules an election on the same date as a statewide primary election, the provisions of Section 111.111, RSMo 1969 are automatically applicable. Furthermore,

the Adair County Court has no power or authority to prevent the City from scheduling an election on the same day as a statewide primary election.

OPINION NO. 292

July 28, 1970

FILED
292

Mr. Clifford Mayberry
Assistant Prosecuting Attorney
Adair County Courthouse
Kirksville, Missouri 63501

Dear Mr. Mayberry:

This official opinion is issued in response to your request for a ruling on the following question:

"The City of Kirksville wants to hold their election at the same time as the August Primary. They have five ballots to vote on. The Adair County Court does not want to go along with this. Is there anything in the statutes that says they have to?"

We assume that your question pertains to Section 111.111, RSMo 1969, which requires that when any political subdivision holds an election on the same day as a statewide general, primary or special election, common polling places will be designated by the county clerk or board of election commissioners. Section 111.111 states as follows:

"Elections of several subdivisions on same day to be held together--who conducts--penalty for failure to comply

"1. Notwithstanding any other provisions of law, whenever any general, primary or special election and elections held by a school, fire or sewer district, municipality or other political subdivision

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are held on the same day, the county clerk, board of election commissioners or other official having authority over general elections shall designate one polling place for the several elections in each precinct or district in the political subdivision in which the elections are held.

"2. The county clerk, board of election commissioners or other proper official shall designate the election officials in each polling place who shall conduct the election for all subdivisions involved.

"3. Any person failing or refusing to comply with the provisions of this section is guilty of a misdemeanor."

Kirksville is a municipality and August 4 is the date of the statewide primary election. Therefore, if Kirksville may legally schedule a municipal election of August 4, the provisions of Section 111.111 would be applicable unless the Adair County Court has the power to veto Kirksville's selection of August 4 as an election date.

Kirksville is a third class city with a commission form of government. See Sections 78.010 through 78.420 RSMo, 1969. As such, it is required to elect a mayor and councilmen on the first Tuesday in April every four years. See Section 78.080, RSMo 1969 and Section 77.040, RSMo 1969. On the second Tuesday preceding this general municipal election, a primary election must be held to nominate candidates to be voted for at the general election. Section 78.090, RSMo 1969. In addition to the general election, a third class city may hold special elections on various issues. For instance, Section 94.060, RSMo 1969, authorizes the holding of a special election to increase the municipal tax rate. Section 95.145, RSMo 1969, authorizes the holding of a special election on a proposition to incur debt for the city. Section 100.110, RSMo 1969, provides for the holding of a special election to authorize the issuance of revenue bonds for industrial development projects. Section 100.090, RSMo 1969, authorizes the holding of a special election on a proposition to issue general obligation bonds for industrial development. None of the statutes authorizing a third class city to hold a special election specify a date upon which it must be held. Therefore, we conclude that Kirksville could schedule on August 4, 1970, a special election on any proposition authorized by the statutes pertaining to third class cities.

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Assuming that Kirksville does schedule a special election on certain propositions on August 4, 1970, does the Adair County Court have any power or authority to veto the selection by Kirksville of August 4 as an election day? We have found no statute granting to a county court the power to veto the selection by a third class city of a date for a municipal special election.

Section 111.111 requires that the county clerk, not the county court, designate polling places and election officials for joint elections coming within the terms of this statute. However, no power or authority is granted to the county clerk to prevent a political subdivision from scheduling an election on the same day as a general, primary or special election. Therefore, if the City of Kirksville schedules an election for the same day as the statewide primary election, the provisions of 111.111 automatically become applicable.

CONCLUSION

It is the conclusion of this office that if the City of Kirksville schedules an election on the same date as a statewide primary election, the provisions of Section 111.111, RSMo 1969 are automatically applicable. Furthermore, the Adair County Court has no power or authority to prevent the City from scheduling an election on the same day as a statewide primary election.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, D. Brook Bartlett.

Very truly yours,



JOHN C. DANFORTH
Attorney General