

GAME & FISH: County court has power to rescind order made relating to Sec. 8246, R.S. Mo. 1929 previously made during August term providing no legal rights have accrued thereunder.

October 20, 1934. 10/20



Hon. Joe E. Green,  
Chief of Wardens,  
Game & Fish Department,  
Jefferson City, Missouri.

Dear Mr. Green:

This department acknowledges receipt of your letter of October 19, 1934, submitting three questions on which you desire an official opinion, as follows:

"Where a county court has made an order calling for an election submitting the proposition to the people of different counties, the right to vote on the closing of the county to quail shooting for two years; if that term of court has not been definitely closed but they have been meeting to adjourned sessions from time to time, does the county court have the right to rescind the order?"

Where a petition has been submitted to the county court and the order made by the county court to the county clerk ordering said election to be held by petitioners in filing petition use a statute that has been repealed, would this be valid?"

Does the county court have a right to change the phraseology of a petition when giving the order to the county clerk concerning the calling of election to be submitted to the voters of the county?"

## I

If an order is made before final adjournment of a term of the county court, the same may be rescinded by the court if no rights have accrued under the order.

This question pertains to the right to petition the county court to vote on the question of having a closed season on quail and the section of the statutes involved is 8246, R.S. Mo. 1929. Omitting the parts which are not pertinent here, it provides:

\*\*\*\*\*Provided, that upon the filing of a petition signed by one hundred or more householders of any county and presented to the county court at any regular or special term thereof more than thirty days before any general election to be had and held in said county, it shall be the duty of the county court to order the question as to whether or not there should be a closed season upon quail for the next two years in their said county submitted to the qualified voters, to be voted on by them at the next election. Upon the receiving of such petition it shall be the duty of the county court to make the order as herein recited, and the county clerk shall see that there is printed upon all the ballots to be voted at the next election the following:

For a closed season	
upon quail.	Yes.
	No.
Erase the word you do	
not wish to vote.	"

The right of the county court to rescind an order previously made during a regular term and before final adjournment of the term is decided in the case of Mead v. Jasper County, 305 Mo., l.c. 485, wherein the court said:

"The county court, having made a valid order which was within its power and duty to make at the November term and before January first, exhausted its power in respect thereto for that year and could not set same aside after January first. particularly if

rights became fixed thereby by the ensuing year. In Bayless v. Gibbs, 251 Mo. l.c. 506, it was said:

'This court, in numerous cases, has repeatedly held that the county courts of the respective counties of the State are not the general agents of the counties of the State. They are courts of limited jurisdictions, with powers well defined and limited by the laws of the State; and as has been well said, the statutes of the State constitute their warrant of authority, and when they act outside of and beyond their statutory authority, their acts are null and void.'

In Saline County v. Wilson, 61 Mo., l.c. 239, it was said: 'County courts are only agents of their respective counties in the manner and to the extent prescribed by law. So long as they continue to tread in the narrow pathway allotted to their feet by legal enactment, their acts are valid, but whenever they step beyond their acts are void.'

The general rule is laid down in 15 Corpus Juris, page 470, where it is said:

'Where a county board or court exercises functions which are administrative or ministerial in their nature and which pertain to the ordinary county business, and the exercise of such functions is not restricted as to time and manner, it may modify or repeal its action; but in no event has such court or board the power to set aside or to modify a judicial decision or other made by it after rights have lawfully been acquired thereunder, unless authorized so to do by express statutory provision. ....The same is the case after an appeal has been allowed, or where some special statutory power is exercised, the time and mode of the exercise thereof being prescribed by statute. Where the previous action of the board is in the nature of a contract which has been accepted by the

other party, or on the faith of which the latter has acted, it cannot be rescinded by the board without the consent of the other party. Conversely, where the proposition has not been accepted or acted on by the other party, the board may restrict or rescind its action. In the absence of express statutory authority, a county board cannot review or reverse the act of a prior board performed within the scope of authority conferred by law. A county board or court may, however, at the term or session at which an order is made, revise or rescind it, provided this is done before any rights accrue thereunder, but ordinarily they have no power to do such act subsequent to such term or session.'

In *State v. Morgan*, 144 Mo. App., l.c. 40, it is said:

'The rule is well settled that a county court may revise or rescind an order at the term or session at which such order is made provided this be done before any rights have accrued under the order.'

In the case of *State ex rel. v. The County Court of Sullivan County*, 51 Mo., l.c. 529, the court enunciates the principle of law that a county court cannot set aside or rescind its order made at a previous term. The court said:

"It was incompetent for the court to set aside or rescind its order made at a previous term. A final order is in the nature of a judgment, and cannot be set aside at a subsequent term on ground of error."

The terms of the county court are set forth in Section 2083, R.S. Mo. 1929, as follows:

"Four terms of the county court shall be held in each county annually, at the place of holding courts therein, commencing on the first Mondays in February, May, August and November. The county courts may alter the times for holding their stated terms, giving notice thereof in such manner as to them shall seem expedient: Provided, that in counties now containing or that may hereafter

contain seventy-five thousand or more inhabitants, and where county courts are now or may hereafter be held at more places than one and at other places than the county seat, the terms of said court shall be held monthly and alternately at the county seat and such other place as may be provided for the holding of such court, and each monthly term shall commence on the first Monday in each month."

The present session of the county court in a county of less than 75,000 population would be the August session and any meetings of the county court would be adjourned sessions and the term would not automatically expire until the November Term.

Conclusion

It is the opinion of this department that the county court has the power and authority to rescind the order made relating to Section 8246, R.S. Mo. 1929 which was previously made during the August term, providing no legal rights have accrued thereunder.

Respectfully submitted,

OLLIVER W. NOLEN,  
Assistant Attorney General.

APPROVED:

---

ROY McKITTRICK,  
Attorney General

OWN:AH