

ELECTIONS: A village can not call an election to become a city of the fourth class and at the same time call an election to vote on proposition of erecting a water-works system.

2-24

February 22, 1934.



Mr. Arch A. Johnson,
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Springfield, Missouri.

Dear Sir:

This department is in receipt of your letter of February 9 requesting an opinion on the following matter:

"To recapitulate: Can a village call an election to vote itself into a city of the fourth class and also call an election for the same time to vote upon the issuing of bonds to be issued by the city of the fourth class for the erection of water works?"

Section 6094, R.S. Mo. 1929 provides:

"All towns not now incorporated in this state containing less than five hundred inhabitants, are hereby declared to be villages. Provided, that any village in this state now or hereafter having more than two hundred inhabitants may by majority vote of the qualified electors therein elect to become a city of the fourth class."

Sections 7664 and 7671, R.S. Mo. 1929 provide for the manner of calling an election by a city of the fourth class to erect a waterworks plant.

Section 7671, R.S. Mo. 1929 provides:

"The council shall then, by ordinance, submit the proposition to erect the waterworks system as provided in the contract, ordinance and other proceedings,

and to pay for same by bonds issued as aforesaid, to the voters of said city, as provided in section 7664. *****

Section 7664 referred to Section 7671 provides:

"The city shall have the right to acquire by purchase any waterworks system in operation in such city at its fair and equitable value, to be agreed upon by the city and the person, firm or corporation owning the waterworks system, and whenever a proposition is made in writing to the city by the person, firm or corporation owning such plant to sell to the city under sections 7661 and 7682 its waterworks system at a price that the city council deems fair and equitable, the council or other proper authorities shall, by ordinance, order a special election to be held, of which they shall give not less than fifteen days' previous notice, by publication in some newspaper published in such city, stating the purpose of such election. Such election shall be held and judges and clerks thereof appointed as in cases of other elections in such cities, and all the general provisions of the election laws applicable to such cities and not inconsistent with the provisions hereof shall apply to and govern such election, and the proposition to be submitted at such election shall be:

'To acquire the waterworks system and property and issue bonds in payment therefor, which shall be a first lien on the waterworks system and property, but no general or personal obligation of the city --Yes.'

'To acquire the waterworks system and property and issue bonds in payment therefor, which shall be a first lien on the waterworks system and property, but no general or personal obligation of the city--No.'

And if a majority of the voters of said city voting on said proposition shall vote 'yes', then such city shall acquire said property

at the price and on the terms named
in the proposition."

It will be noticed that the proposition to erect the water-works must be submitted to the voters of the city at a special election through the city council by ordinance. In the case here under consideration there is no "city council" to make the required "ordinance"--in fact, there are no "voters of the city" as, at the time of the proposed election, Walnut Grove will not be a city of the fourth class and can not be until the election results are determined.

In view of the foregoing, it is the opinion of this department that a village cannot call an election to become a city of the fourth class and at the same time call an election to vote on the proposition of erecting a waterworks system.

Respectfully submitted,

JOHN W. HOFFMAN, Jr.,
Assistant Attorney General

APPROVED:

ROY MCKITTRICK,
Attorney General.

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