

ELECTIONS: An election to determine whether or not intoxicating liquor shall be sold in a city must be a special election and must not take place within 60 days of any general election; city or school election not a general election under the Constitution and Laws of Mo.

March 9, 1934. 3-9



Hon. R.B. Snow, Jr.,
City Attorney,
Ferguson, Missouri.

Dear Sir:

This department is in receipt of your request for an opinion as to the following state of facts:

"The Board of Aldermen of the City of Ferguson had presented to it a petition requesting an election to be called for the purpose of permitting the sale of liquor in excess of 5% and in accordance with the provisions of the Liquor Control Act requests that an election to vote upon said proposition be held within 40 days. I understand that you have ruled that an election for school directors is an election held under the Constitution and that under the provisions of the Liquor Control Act no special election could be held as contemplated in said Act until 60 days after such school election.

In view of the fact that there will be held in the City of Ferguson on April 3rd a municipal election for the purpose of electing aldermen and also a school election for the purpose of electing directors of the school board and fixing a rate of taxation, I would like to know what your latest ruling is on the question of what constitutes a general election and if possible would like to have a copy of your opinion so that I may advise the Board of Aldermen as to a date it may set for said election."

I.

An election to determine whether or not intoxicating liquor shall be sold in a city must be a "special election and must not take place within sixty days of any general election.

Sec. 44-a-1 of the Liquor Control Act provides in part as follows:

"Provided, that no such election held under the provisions of this section shall take place on any general election day, or within sixty (60) days of any general election held under the Constitution and laws of this state, so that such elections as are held under this section shall be special elections and shall be separate and distinct from any other election whatever.

It will be noticed that the election must be "separate and distinct" from any other election. In the case of *Dysart v. City of St. Louis*, 11 S.W. (2d), l.c. 1052, 1053, the Court said:

"Here is an indication of an intention on the part of the Constitution makers to define a special election as one especially called at a time different from the day of any election which comes regularly according to law. The definition of 'election', in section 88 of the act, shows that a general election may be local as well as state wide.

* * * * *

The rulings in other states are conflicting upon this subject, but the weight of the authority favors the definition that a special election means one taking place at a time different from that at which an election fixed by law is held."

II.

A city election or school election not a general election under the Constitution and laws of the State.

Article VIII, Sec. 1 of the Constitution of Missouri provides:

"The general election shall be held biennially on the Tuesday next following the first Monday in November of each even year; but the General Assembly may, by law, fix a different day--two-thirds of all members of each house consenting thereto."

Sec. 655, R.S. Mo. 1929, providing for rules for construing statutes, provides in part:

"****the term 'general election' refers to the election required to be held on the Tuesday succeeding the first Monday of November, biennially. ****"

Fortunately, the case of *The State v. Searcy*, 39 Mo. App. 393 construes a similar provision of the local option law of 1888. The court said (l.c. 405-6):

"It is next objected that, whereas, according to the law in force at the time when this election was ordered and held, a general school election in all the counties of the state was required to be held on the first Tuesday in April, which was the second day of that month, and whereas the election ordered by the county court on the question of local option was held on the eleventh of February, which was within sixty days of the election of school directors, the election on the question of local option was void under the terms of the statute. The provision of the statute relating to elections on the question of local option outside of the corporate limits of any city or town are 'that no such election, held under the provisions of this act, shall take place on any general election day, or within sixty days of any general election held under the constitution and laws of this state, so that elections as are held under this act shall be special elections, and shall be separate and distinct from any other election whatever.' The Revised Statutes of 1879 contain this general provision: 'The construction of all statutes of this state shall be by the following additional rules, unless such construction be plainly repugnant to the intent of the legislature, or of the context of the same statute. **** Sixteenth, the term 'general election' refers to the election required to be held on the Tuesday succeeding the first Monday of November biennially'. R.S. 1879, section 3126. This shows that

the school election required to be held in April was not a 'general election' within the meaning of the local option statute, and this disposes of this assignment of error."

CONCLUSION

In view of the foregoing, we conclude that a city or school election is not within the meaning of the Liquor Control Act providing "that no such election held under the provisions of this section shall take place on any general election day or within sixty days of any general election held under the Constitution and laws of this state." It is, however, necessary that any election called under the Liquor Control Act must be separate and distinct from any other election.

Respectfully submitted,

JOHN W. HOFFMAN, Jr.,
Assistant Attorney General

APPROVED:

ROY MCKITTRICK,
Attorney General

JWH:AH