

ELECTIONS:) Form of ballot for bond election, substantial
) compliance with Section 7219, R. S. Mo. 1929.
BONDS:)

12-16

December 10, 1935.

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Senator A. H. Drunert
and
Mr. William Barton
Jonesburg, Missouri

Gentlemen:

This is to acknowledge receipt of your letter of December 2d, 1935, in which you request the opinion of this Department on the question therein submitted. Your letter is as follows:

"Jonesburg originally incorporated as a village held an election Saturday, under provisions Sec. 7218, R. S. Mo. 1929, for the purpose of voting bonds for the erection of a community center building to meet a Federal grant under W. P. A. The proposition carried, and bonds will be issued.

"We are writing to inquire if the form of ballot as set out in Sec. 7219, 'For increase of debt--yes; For increase of debt--no' changed for some reason by the Board of Trustees of Jonesburg as follows: 'For the Bond Issue--Yes; For the Bond Issue--No' is a substantial compliance with Section 7219 R. S. Mo. 1929, so as to be legal.

"Unofficially speaking the issue to issue bonds carried by seven votes over the two thirds majority needed to vote bonds.

"Exhibit A is the ballot that was used. Exhibit B is the ballot suggested as proper, but since the election was held using Exhibit A as the official ballot the question arises as suggested above."

Section 7219, Revised Statutes of Missouri, 1929, provides as follows:

"The council, trustees or other proper officers of such city, town or village shall prepare and cause to be printed ballots to be used at such election, which shall be in the following form: 'For increase of debt--Yes;' 'For increase of debt--No;' the former of which shall be taken as a vote assenting to such increase of debt, and the latter as dissenting therefrom."

Attached to your letter, marked Exhibit "A", is a form of official ballot used in the election of November 30, 1935, in which the ballot provides: "For the Bond Issue--Yes; For the Bond Issue--No." It is apparent that the form of the ballot does not follow the form as set forth in the statute in Section 7219, supra, wherein the statute says that the ballot shall be in the following form: "For increase of debt--Yes;" "For increase of debt--No;"

If the statute had provided that no ballot could be counted except it be in the precise form therein set forth or the statute contained words showing that the provisions as to the form of the ballot were mandatory, it would then be clear that if the ballot as set forth in the statute was not used the election would be invalidated. We do not find any provisions in this statute which make the statute mandatory.

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Mr. William Barton

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The cases hold that where the statutes merely provide that certain ballots shall be used and do not prescribe what results shall follow if they are not used, the statute is directory, and the test as to the legality of the ballot is whether or not the voters were afforded an opportunity to express, and that they did fairly express, their will. Sanders v. Lacks, 142 Mo., l. c. 263; Horsefall v. School District, 143 Mo. App. 541.

In the case of State ex rel. City of Memphis v. Hackman, 202 S. W. 7, 273 Mo., l. c. 699, the court, in discussing the question as to the form of a ballot in a bond election, had this to say:

"It is contended that the form of the ballot used at the election did not conform to the law. Section 9546, Revised Statutes 1909, provides that the ballot to be used at elections of this character shall be in the following form: 'For increase of debt. Yes. For increase of debt. No.' The notice of this election and the ballots used at same were: 'For Incurring Indebtedness, Yes. For Incurring Indebtedness. No. The former of which shall be taken as a vote assenting to increasing said debt and the latter as dissenting therefrom.'

"The question confronting us here is as to the nature of the statute. If directory, then the form of ballot used was in substantial compliance with the law, otherwise not. The general rule on this subject is that where a statute provides specifically that a ballot not in a prescribed form shall not be counted, the statute is mandatory and must be enforced; but where it merely provides that certain

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ballots shall be used and does not prescribe what results shall follow if they are not used, the statute is directory, and the test as to the legality of the ballot is whether or not the voters were afforded an opportunity to express and that they did fairly express their will. (Sanders v. Lacks, 142 Mo. l. c. 263; Horsefall v. School Dist., 143 Mo. App. 541.) Here the statute simply prescribes a certain form of ballot, but does not declare what results will follow if it is not used. The statute, therefore, may be reasonably held to be directory. In State ex rel. v. Stouffer, 197 S. W. (Mo.) l. c. 251, the ballots used did not conform to the requirements of the statute, but, as in the case at bar, simply provided that a certain form of ballot should be used without prescribing that none other should be counted. That statute was held to be directory."

From the above and foregoing authorities we are of the opinion that the provisions of Section 7219, R. S. Mo. 1929, are not mandatory but directory, and that the ballot used in the instant municipal election, being in substantial conformity therewith, the bonds authorized, insofar as dependent upon the form of the ballot, are legal.

Very truly yours,

COVELL R. HEWITT
Assistant Attorney-General

APPROVED:

ROY MCKITTRICK
Attorney-General

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