

ELECTIONS:
COUNTY BUDGET:

If petition under Section 12805, election on restraining of animals should be held even though costs exceed the estimate for elections in budget.

September 29, 1938

9/30



Mr. Hubert E. Lay
Prosecuting Attorney
Texas County
Houston, Missouri

Dear Sir:

This department is in receipt of your request for an official opinion which reads as follows:

"Recently a petition as is provided for under section 12805 R.S. 1929 was filed with the County Clerk asking the County Court to submit to the qualified voters at the general election 1938, the question of restraining animals from running at large.

"The least possible cost for submitting this question will be approximately \$225.00, and since the petition was not filed until long after the 1938 Budget was made and approved there is no provision or allowance for such sum under Class 2 of expenditures.

"Under the present budget and expenditures to date the county will be unable to issue warrants for salary of its officials for the month of December.

"In your opinion would the County Court be justified in refusing to submit the

above question at this election on the grounds that the county did not have sufficient funds now to pay the expenses already set out in the budget, and that no allowance was made in the budget for such expenses."

As stated in your request, Section 12805, R. S. Mo. 1929, provides that the question of restraining animals may be submitted at a general election in any county upon the petition of one hundred householders of such county.

Section 12806, R. S. Mo. 1929 provides that any such election shall be governed in all respects by the laws applicable to general elections for state and county purposes.

In 1933 the Fifty Seventh General Assembly enacted what is commonly known as the County Budget Act. The Act sets up six classes of expenditures, and under class two it is provided as follows (Laws of Missouri, 1933, page 341, section 2):

"Class 2: Next the county court shall set aside a sum sufficient to pay the cost of elections and the cost of holding circuit court in the county where such expense is made chargeable by law against the county except where such expense is provided for in some other classification by this act. This shall constitute the second obligation of the county and all proper claims coming under this class shall have priority of payment over all except class 1. * * * * *

This sum is to pay "the cost of elections" and has "priority of payment over all except class 1."

The expense attendant to the voting on the question of restraining animals is a part of the "cost of elections" and is a proper payment out of Class two. Under the County Budget Act this cost must be met by the county before any

of the subsequent classes, that is, roads and bridges, salaries, miscellaneous expenses, etc., are paid.

This department has held in an opinion to Honorable Homer Rinehart on January 24, 1935, that regardless of the estimate made by the county court for class one that the bills should be paid regardless of the fact that by paying the same the gross amount will exceed the sum set aside and originally estimated for the reason that class one constitutes a first lien on the funds of the county and the priority of the classes should be sacredly preserved. A copy of this opinion is herein enclosed.

The reasoning set forth in that opinion applies equally to class two and, therefore, even though the estimate of class two is insufficient to meet the expenses of holding the election still such election should be held and the expenses paid although subsequent classes may suffer thereby.

CONCLUSION

It is, therefore, the opinion of this department that the question of whether animals should be restrained should be submitted to the voters even though the expenses of such election would cause the estimate of expenditures for holding elections under class two of the County Budget Act to be exceeded.

Respectfully submitted,

ARTHUR O'KEEFE
Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

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