

COURT HOUSE REMOVAL: Sufficiency of Petition.

July 8, 1938 7/13



Hon. L. B. Shuck  
Prosecuting Attorney  
Shannon County  
Eminence, Missouri

Dear Sir:

We have your request for an opinion as to the validity of the petition presented to the County Court asking for the removal of the county seat of Shannon County from its present location to the town of Winona, to be submitted to the voters at the General Election in November. A copy of the petition, without signatures, as presented, is as follows:

"We, the undersigned citizens and qualified voters of Shannon County, Missouri, composing at least one-fourth of the qualified voters of said county, hereby petition your honorable body, the County Court of said County, for removal of the County Seat and seat of justice of said Shannon County, Missouri, from Eminence in said county, where it is now located, to the City of Winona in said county; and petition your honorable body as such County Court, that you make an order of record of said Court directing that the proposition to remove such seat of justice to the place named in said petition, to-wit: Winona, Shannon County, Missouri, be submitted to the qualified voters of said County, at the next General Election to be held in said County and State of Missouri, on the first Tuesday after the first Monday, in November, 1938, it being Tuesday, November 8th, 1938.

And otherwise that said Court carry out the provisions of the Statutes and laws of the State of Missouri in such case made and provided.

The City of Winona hereby offers and donates the present City Hall and square on which same is located, and Tenders, Donates and Pledges a good and sufficient deed to said property or offers and donates the Ball Park property, complete with good and sufficient deed to said county for County Seat."

The Courts take judicial notice of the existence of a city, its population and lawful powers conferred upon its governing body. The last paragraph of the petition relating to the offer of the City of Winona to donate a site for the Court House is void and of no binding effect. The persons who signed this petition have no authority to bind the City of Winona and there is no obligation on the City of Winona to donate the present City Hall or a site for a County Court House.

It is apparent that this petition was presented under and by virtue of Section 12073 R. S. Missouri 1929. This section provides that one-fourth of the voters of a County may petition the County Court for removal of the County Seat, which proposition shall be submitted to the qualified voters of the County at the next general election.

Commenting upon this statute the St. Louis Court of Appeals in State ex rel. vs. Garrett, 76 Mo. App. 295, l. c. 303, said:

"Prior to the revision of 1865, the corresponding section to the one quoted, provided that an order for the removal of the seat of justice of a county could only be made upon the petition of three fifths of the taxable inhabitants of the county. This requirement necessarily prevented the submission of more than one

proposition of removal at the same election, for the obvious reason that two petitions containing the requisite number of signers could not be obtained. In 1865 the section was amended so as to require the signatures of one fourth of the voters of the county, thus making it possible to secure the requisite number of signers to two or more petitions. Therefore as to the question involved the amended statute becomes doubtful and ambiguous, and in construing it resort must be had to the rules which govern in the construction of doubtful or ambiguous statutes. The object of all statutory construction is to get at the true meaning or intention of the legislature, and that meaning should be adopted which accords best with the general purpose of the act."

Certain questions of fact arise in connection with this petition, all of which must be determined by the County Court. The first question is: Did one-fourth of the voters of Shannon County sign the petition? It is the duty of the County Court to ascertain the number of voters who signed the petition; the appearance of names on the petition does not satisfy the state statute, the County Court must investigate and determine whether or not the required number of voters signed the petition.

It is also necessary for the County Court to determine who are eligible voters, and for this purpose we refer you to Section 10178 R. S. Missouri 1929, setting forth the qualifications of voters. In compliance with this statute it is necessary for the County Court to determine, as a fact, that at least those who signed the petition are citizens of the United States, are over the age of twenty-one years, have resided in the State one year preceding the November 1938 election, and have resided in the county, city or town where they propose to vote at least sixty days prior to the November 1938 election. The County Court shall not consider as signers of the petition persons who do not meet these qualifications.

July 8, 1938

It is also the duty of the County Court to eliminate from the petition the names of any signers who may be an officer, sailor or marine in the regular army or navy of the United States.

The County Court shall not count any name on the petition which is that of a person kept in an eleemosynary institution at public expense or while such person may have been confined in any public prison. It is also the duty of the County Court to eliminate from the petition the names, if any, of any person who has been convicted of a felony or other infamous crime or convicted of any misdemeanor connected with the exercise of the right of suffrage, who has not received a full pardon.

It is also the duty of the County Court to ascertain as a fact that the persons whose names appear on the petition actually signed the petition, since the writing of their names thereon by some one else whether authorized or not is not sufficient.

The above matters of fact rest exclusively in the jurisdiction of the County Court, since in this matter it acts, as an administrative agency and not in a judicial capacity, and for the further reason the opinions of the Attorney General must be limited to questions of law and this office has no authority to decide disputed questions of fact. 6 C.J. p. 811, Section 16.

If said petition meets the above and foregoing requirements as to the number of voters signing said petition, then the last paragraph of the petition with reference to the donation of the City Hall in Winona, being a void clause, may be treated as surplusage and totally disregarded herein, and the matter may be submitted to the voters at the November election.

Hon. L. B. Shuck

-5-

July 8, 1938

The County Court possesses the same powers at a Special Term as it does at a Regular Term, to pass upon the petition and matters connected therewith. Sections 2085, 2086 and 2087, R. S. Missouri, 1929; State vs. Fulton, 152 Mo. App. 345, l.c. 350.

CONCLUSION

It is therefore the opinion of this office that the County Court may pass upon the questions of fact raised by this petition at a Special or Adjourned Term of the County Court, and if the County Court finds as a fact that one-fourth or more of the legally qualified voters of Shannon County have signed the petition herein, then it may make an order directing that the proposition to remove the County Seat be submitted to the qualified voters at the November 1938 election.

Respectfully submitted,

FRANKLIN E. REAGAN  
Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
(Acting) Attorney General

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