

ELECTIONS: Ordinance inconsistent with statutes is void.

June 20, 1938

6-21



*J. H. Anderson*  
Board of Election Commissioners  
For the City of St. Louis  
208 South Twelfth Boulevard  
St. Louis, Missouri

Gentlemen:

We acknowledge receipt of your letter of June 15, 1938, which reads as follows:

"We quote below a letter received from the Board of Aldermen, dated June 9, 1938:

'I am transmitting herewith certified copy of Board Bill No. 45 (now ordinance No. 41,333) entitled,

An ordinance providing for and directing the submission to the qualified voters of the City of St. Louis at the primary election to be held in said City on Tuesday, August 2, 1938, two Propositions for the incurring of indebtedness and issuance of bonds of the City of St. Louis, as follows: Proposition No. 1 in the amount of Seven Hundred and Fifty Thousand Dollars (\$750,000) for the construction of fire engine houses and the acquisition of land therefor and for the purchase of fire department equipment, and Proposition No. 2 in the amount of Seven Hundred and Fifty Thousand Dollars (\$750,000) for the purpose of providing relief work for needy unemployed citizens of said city through cooperation with any agency or agencies

of the Federal Government on public improvement projects for said city; providing for the publication of notice of said election and directing the Board of Election Commissioners to conduct the same, specifying the form of ballot to be used, and containing an emergency clause.

This is in accordance with the provisions of Section Seven of attached ordinance.'

We also quote Section 3 of Ordinance 41,333 referred to:

'Notice of the submission of the foregoing propositions at said primary election shall be given jointly by the said Board of Election Commissioners and the City Register of the City of St.Louis, by publication of this ordinance in the City Journal once each week for four weeks, and in the St.Louis Globe-Democrat, the St.Louis Post-Dispatch, the St.Louis Star-Times, the Westliche Post, the St.Louis Argus and the St.Louis American also once each week for four weeks, the first publication in each instance to be at least twenty-one (21) days before, and the last publication within two (2) weeks of the date of said election. Proof of the publication of said notice shall be made by affidavits of the publishers of said newspapers, with copy of such publication attached thereto, and such affidavits shall be duly filed with the City Register.'

The Board asks for an opinion as to whether it should follow the said ordinance by publication of the notice for the Special Election in the papers specified, in view of Section 34 of the law pertaining to registration in cities of 600,000 or more inhabitants, reading:

'Notice of time and place of registration and election to be given. - It shall be the duty of such Board to give ten days' notice, by one publication only, unless otherwise provided by law, in three newspapers of such city, if possible, published in the English language of the time and place of election in each precinct of the city.'

Section 34 to which you refer is part of

"An Act to provide for the permanent registration of voters and for the holding of elections, including primary and special elections, in all cities of this state which now contain or may hereafter contain a population according to the last decennial census of the United States of 600,000 or more inhabitants\* \* \*".

The same was passed by the Fifty-Ninth General Assembly and appears in the Laws of Missouri 1937, pages 235, 278.

Section 2, Subsection "D" of said Act, page 237, defines the term "Election" thus:

"(d) 'Election' shall mean any general, special, municipal and primary election unless otherwise specified, and shall include a submission to a vote of the people of any amendment, law or other public act, or proposition."

The term "Election" having been defined by the Legislature to include a "proposition", the question to be determined is whether in the submission of the latter to the people the ordinance or the statute is to be followed with respect to the provision for notice.

June 20, 1938

McQuillan on Municipal Corporations, 2nd Edition,  
Volume 2, Section 683, Page 562, declares that:

"Ordinances inconsistent with the statutes  
and general laws of the State are void."

In the case of City of St. Louis vs. Dreisoerner,  
147 S.W. 998, l. c. 1000, 243 Mo. 217, l. c. 223, the Court  
said:

"In the exercise of such powers a municipal  
corporation can enact no ordinance which  
violates the Constitution of the State or  
the United States, or which contravenes the  
statutes and decisions of this State."

The provision for notice in the proposition to be sub-  
mitted to the people as contained in the ordinance being incon-  
sistent with the statutory provision, we are of the opinion that  
the Board of Election Commissioners for the City of St. Louis  
must follow the provision for notice as contained in Section  
34 of the Laws of Missouri 1937, page 258.

Respectfully submitted,

MAX WASSERMAN,  
Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
(Acting) Attorney General

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