

ELECTIONS:
DOG LAW:

After the provisions of the law pertaining to taxation of dogs has been adopted same may not be abolished by later election.

January 12, 1940

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Honorable Latney Barnes
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Mexico, Missouri

Dear Sir:

This is in reply to yours of recent date wherein you submit the question of whether or not it is possible for an election to be had for the purpose of abolishing what is commonly known as the dog law.

Article 11 of Chapter 88, R. S. Missouri 1929, together with the amendments that have been added thereto, contains the provisions of the laws of Missouri which relate to the taxation of dogs in this state. Under Article 12 of said chapter provision is made for the adoption by local option elections the provisions of the dog tax law.

Section 12881 of said article provides in part as follows:

"* * * * * Provided that upon the filing of petition signed by one hundred or more householders of any county and presented to the county court at any regular or special session thereof more than thirty days before any general election to be had and held in said county, it shall be the duty of the county court to order the question, as to whether or not there should be adopted the law, creating a license tax on dogs, submitted to the qualified voter, to be voted upon at the next elec-

tion. Upon the receiving of such petition it shall be the duty of the county court to make an order as herein recited, and the county clerk shall see that there is printed upon all ballots to be voted at the next election the following:

"For creating a license tax on dogs--

Yes.

No.

(Erase the word you do not wish to vote.)

"The returns of said election upon said subject shall be opened, canvassed and certified, as the returns for general elections. If the majority of the votes cast upon the subject be in favor of license tax on dogs, the county court shall spread the result of such election upon its records and give notice thereof by publication in some newspaper printed and published in such county and such law shall become operative from the time such publication is made."

By this part of said section it will be seen it sets up the plan whereby the provisions of the dog law may be adopted by an election by the people in the particular county in which it is proposed that the dog law be effective.

In our search through the statute pertaining to this subject we fail to find where the lawmakers have made any provisions for an election to do away with the provisions of the dog law after it has once been adopted. In fact the last part of said Section 12881 seems to indicate that the lawmakers, when this legislation was passed, had in mind that if the people

in the particular county adopted the law, then it would remain the law of that county until the Legislature changed it. This view is supported by the statement in said section, which reads as follows:

" * * and such law shall become operative from the time such publication is made."

For authority to hold an election, the party calling the election must point to some statute authorizing such call and election. In Volume 20 C. J., page 95, at paragraph 76, the rule on authority to hold elections is stated:

"In all popular forms of government the power of a majority to bind the minority by a popular vote depends upon the fact that the elections are held by virtue of some legal authority, and an election held without affirmative constitutional or statutory authority is universally recognized as being a nullity. * * * * *"

In the case of State ex rel. v. Ellison, 271 Mo. 123, the Supreme Court announced the rule that, "No election can be held unless provided for by law,"

And in the case of The State ex rel. McHenry v. Jenkins, 43 Mo. 261, the rule is stated as follows:

"Where the law made no provisions for the election of clerks of courts in 1868 an election held in such year is wholly void although there was an admission to hold the regular election in 1866."

CONCLUSION.

Since the lawmakers have made no provision for an election to repeal the provisions of the dog law

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in counties which have adopted it by election, then under the foregoing authorities it is the opinion of this department that in counties which have adopted by local option the provisions of the dog tax law there is no authority to call and hold an election for the purpose of repealing the dog tax law in that county.

Respectfully submitted

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APPROVED:

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