

COUNTY COURTS:

Regarding the legality of a county road bond issue submitted to the voters, under Section 8607, R.S. Mo. 1939; bond issue void.

Smith

October 1, 1945

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Honorable Roy A. Jones
Prosecuting Attorney
Johnson County
Warrensburg, Missouri

Dear Mr. Jones:

This office is in receipt of your letters of August 21, 1945, and September 14, 1945.

In your letter of August 21, 1945, you requested an opinion of this Department as to the use of funds voted under a road bond issue, for the purpose of graveling the rural mail routes of Johnson County. In your letter of September 14, 1945, you further requested an opinion of this Department as to the legality of the election voting the bond issue.

As we read your letters, the first question to be determined is that regarding the legality of the proceedings by which the road bond issue was voted.

Section 8607, R.S. Mo. 1939, under which the election was held, reads as follows:

"Whenever a petition, signed by two hundred (200) or more taxpaying citizens of any county in this state shall be presented to the county court thereof, requesting that a proposition be submitted to the qualified voters of the county to issue the bonds of said county for the grading, construction, paving or maintaining of paved, gravelled, macadamized or rock roads and necessary bridges and culverts therein, it shall be the duty of said county court to order an election to be held in said county upon the question, which said election shall be held within forty-five

(45) days after making the order: Provided, that such election may be held on the day of any election at which candidates for state offices may be nominated or elected, provided said day is not more than forty-five (45) days after the making of said order. Said order and the notice of election shall state the amount of bonds to be issued and the date of the election, and that the proceeds of the bonds are to be used for the grading, construction, paving or maintaining of paved, graveled, macadamized or rock roads and necessary bridges and culverts in the county. The county clerk shall give notice of said election by causing the order providing for the election to be published once a week in four separate issues of each of two newspapers published in the county, the last insertion to be made prior to the date of said election. The election herein provided for shall be held in the same manner and at the same polling places that general elections are or may be held and no person shall be permitted to vote at such election who would not be qualified to vote at a general election were such an election held on that day. The ballots shall be printed at the expense of the county and distributed among the election precincts as in the case of general elections and shall be in substantially the following form, to-wit:

"OFFICIAL BALLOT.

"For incurring of county indebtedness for road and bridge purposes. Against incurring of county indebtedness for road and bridge purposes. (Erase the clause you do not favor.)"

"The result of such election shall be canvassed, determined and promulgated as in the case of general elections and shall be certified to the county court and recorded on the records thereof."

The provisions of the statutes providing for special elections are mandatory insofar as their provisions relating to the giving of the notice of the time and place of the election are concerned. The Missouri Courts have consistently

held that this matter of the giving of the notice is a jurisdictional matter, and without strict compliance therewith, the election is void.

Wood vs. City of St. Joseph, (1945, MO. App.),
186 S.W. (2d) 212;
State ex rel. Brince vs. Franklin, (1926) 283
S.W. 712, 220 Mo. App. 232;
Williams vs. Etterson, (1914) 170 S.W. 370, 178
Mo. App. 178;
Michel vs. Taylor, (1910) 127 S.W. 949, 143 Mo.
App. 683;
City of Brunswick vs. Benecke, (1921) 233 S.W.
169, 289 Mo. 307;
State vs. Johnson County Court, (1909) 138 Mo.
App. 427.

In Wood vs. City of St. Joseph, supra, the plaintiff sued to recover salary covering eleven and one-half months services, at the rate which he claimed he was entitled to receive in accordance with the wage increase voted by the people of St. Joseph, at a special election in 1942. The question in the case was the legality of the election, which in turn depended upon whether proper notice had been given to the voters. The Court held the election was void, and said:

"It is held, in this state, that where a special matter, such as the proposal in question, is submitted at a general election, so far as the submission of the special matter is concerned, it is to be treated as though it is being submitted at a special election and that the law authorizing its submission must be strictly followed; that the giving of notice to the public of the time and place of the election is 'jurisdictional', and that the election is void unless such notice is given strictly in accordance with the statute if the statute prescribes the method in which the notice should be given. (citing cases).

"As before stated, no effort was made to comply with either Section 6572, relative to the publication of the proposition, nor with Section 6253, concerning

notice, by publication, in two daily newspapers, of the mayor's proclamation calling for the election. The publishing of the proposition itself, is for the purpose of giving the widest publicity to the proposal. *Palmberg v. Kinney*, 65 Or. 220, 132 P. 538; In re House Resolution No. 10, 50 Colo. 71, 114 P. 293, 295.

"While Section 6572 provides that the ballot used in initiative elections shall contain merely the words "For the Ordinance" (stating the nature of the proposed ordinance) and "Against the Ordinance" (stating the nature of the proposed ordinance) and the ballot, published and used in the election in question contains these words, yet, Section 6572 contemplates that, before the day of the election the ordinance or proposition be published, in full, in each of the daily newspapers, such publication to be not more than twenty or less than five days before the submission of such proposition or ordinance to be voted on. Evidently it was the purpose of the legislature to make provision for the voters to obtain full knowledge of the contents of the ordinance and to provide sufficient time for them to study the proposition so that they might cast an intelligent vote upon it. Under such circumstances when the voters go to the polls they have sufficient information as to the proposition to be voted upon so that it is merely necessary to have the ballot indicate whether an affirmative or negative vote is being cast by the voter. The few words appearing on the ballot, itself, are not intended to inform the voters as to the contents of the ordinance or proposition being voted upon.

"The publication, in this case, of

the ballot, if it can be construed as any notice of the election whatever (of course, it did not comply with the statute) was not published 7 days before the election, as required by Section 6253, but the first publication was 8 days before the election. In addition to this, the notice (if any) obtained from the ballot, was defective, in that, it would indicate that only those voting the Democratic or Republican ticket would be entitled to vote on proposed amendment to the ordinance. No instruction was given as to how one voting the Independent ticket could vote for or against the proposition. In fact, there was no instruction whatever relative to voting on the proposition. As to notice of the time and place of a special election, it was held in State ex rel. v. Ross et al., supra, 180 Mo. App. loc. cit. 693, 143 S.W. at page 505:

"To the general proposition that time and place are of the substance of an election we give our unqualified assent; and, if the statute in terms required the polling places to be designated in the order for the election, or the notice of the election, we should hold such a provision mandatory and an election held without this provision being complied with void. As we view it, the things upon which jurisdiction to hold such an election as this rests are a proper petition, an order for the election, and notice of the election. If all of these are in substantial compliance with the statute, then jurisdiction attaches, and up to this point all specific provisions of the statute should be held mandatory, and a substantial compliance with its terms required."

The above cases show that the provisions of Section 8607, supra, relating to the giving of the notice

of the election to the voters of Johnson County are mandatory, and must be strictly followed.

Section 8607, supra, provides that the County Clerk shall give the notice by causing the order providing for the election to be published once a week, in four separate issues of each of two newspapers published in the County.

From the affidavits of the publishers of The Warrensburg Standard-Herald, and the Warrensburg Star-Journal, which affidavits you forwarded to me in your letter of September 14, 1945, it appears that the notices of an election on the road bond issue were published on October 27, and November 3, 1944. We think the intention of the Legislature was that the notice should be given weekly, for four weeks. In this case, it is obvious that the notice was insufficient to meet the requirement of Section 8607, since October 27, 1944, fell on Friday of the last full week of October, 1944, and November 3, fell on the next Friday, the first week in November. Therefore, the notice could have been given only for two weeks instead of the required four. This is true of both newspapers.

If the statutes were construed to mean that notice was required to be given only in four separate issues of each of the two newspapers, the notice given in the instant situation would still not meet the requirements, since the affidavits show that only two insertions were made in both papers, one each on October 27 and November 3, 1944. Under either construction of the statute therefore, we think the notice was not given the required number of times. We notice that in the affidavit of The Star-Journal that the numeral four is inserted in the space left to designate the number of weeks in which a notice has been consecutively given. The list of insertions, however, show that it was given consecutively for only two weeks. We assume that the insertions set out are the only ones which were actually made, as the separate insertions would undoubtedly have been listed had they been made. However, even if there was an oversight in The Star-Journal's affidavit as to the number of insertions the statute would not have been complied with, since the affidavit of the Warrensburg Standard-Herald shows that the insertions in that paper were made only "from October 27, 1944 to November 3, 1944".

You very kindly forwarded us copies of the papers in which the notice was given, and we note that the notice was, in part, in the form of an official ballot. The notice in both papers read, in part, as follows:

"Submitting to the qualified voters
whether the County of Johnson shall

October 1, 1945

incur indebtedness and issue bonds in a sum not to exceed \$435,000.00 for the purpose of hardsurfacing, with crushed limestone rock, all rural mail routes in said County not heretofore graveled or paved."

From the above, we think it is clear that the provision of Section 8607, which provides that the County Clerk shall publish the order of the County Court calling the election, is not complied with. From a comparison of the certified copy of the order of the County Court, and the notice published in the newspapers, it will be seen that the order of the County Court was not published.

We are, therefore, of the opinion that the election on the road bond issue was void in the two particulars set out above, namely; that the order of the County Court was not published as a notice, and that the notice was not published for the required number of times.

Since we think the election proceedings by which the rural road bond issue was voted were void, and the bonds issued under such authority would be invalid, we think it unnecessary to refer to the questions upon which you requested our opinion, regarding the use of money raised by such bond issues. If the bond issue is void, and no money could be lawfully expended under such bond issue, the question of how money raised by a valid bond issue could be used, becomes a moot question.

CONCLUSION.

It is, therefore, the opinion of this Department that the \$435,000.00 road bond issued, voted by the people of Johnson County to gravel the rural mail routes of said County, would be invalid, because the provisions of Section 8607, R.S. Mo. 1939, under which the election was held, were not complied with.

Respectfully submitted,

SMITH N. CROWE, Jr.
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

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