

ELECTIONS: Cou y hospr'ital.



February 13, 1947

Honorable Clyde E. Combs  
Prosecuting Attorney  
Barton County  
Lamar, Missouri

Dear Sir:

This is in reply to your letter of recent date, requesting an official opinion of this department, and reading as follows:

As prosecuting attorney of Barton County I request the opinion of your office in the following matters:

I.

"In February 1946 Barton County, under the authority of Sections 15192 and following, R. S. No. 1939, voted a \$100,000 bond issue for a county hospital, said bonds to be retired from the proceeds of a one and one-half mill tax for such purposes. Five trustees were appointed and later elected and bonds authorized by the special election have been issued. This election was held and action taken thereunder in anticipation of a federal grant being issued to the county to aid in the construction of the county hospital. At the present time the trustees and county officials are of the opinion that it will be at least two years before any aid from the federal government can be expected in this project. They are now desirous of calling another special election for the issuance of another \$100,000 in hospital bonds so that the county can proceed with the construction of the hospital without federal aid, this new bond issue to be retired with an additional one-half mill tax.

"In examining the matter I find that Sections 15192, 15193, 15194 and 15195 have been reenacted by the Laws of 1945, and that Sections 15196 and 15197 have been repealed. There is no provision in the reenacted statutes setting out the procedure to initiate the calling of a special election nor giving the required notice necessary for said election, nor the type of ballot to be used therein. Also, there is no limitation as to the amount of the tax as was set out in old Section 15192, with the exception of the constitutional limitation as set out in Article 6, Section 26b.

"The last completed assessment in Barton County showed the assessed valuation to be over \$13,000,000 and the only outstanding indebtedness of the county at the present is the above mentioned hospital bond issue of \$100,000.

"I request your opinion as to the manner in initiating the calling of a special election on the proposed bond issuance, the required notice to be given thereof, and whether or not there is any provision in the law making the proceeding for the issuance of another \$100,000 for the erection of a county hospital unlawful.

2.

"At the present time petitions are being distributed and signed in the county under the provisions of Sections 10376.1 and 10376.2 to initiate a special election to submit a proposal of an annual distribution of the capital of the liquidated county and township school funds. Should the necessary petitioners be obtained, I request the opinion of your office on the question that if the required notices of this election and the election for the issuance of county hospital bonds as set out above be separately given, but integrated so that the date of the special election on each issue would fall on the same day, whether there is any provision of the law making it unlawful for the special election in this matter and the matter set out above to

be held on the same day and thus save the added expense of two special elections on different days."

Section 15192 of House Bill No. 756 of the 63rd General Assembly provides as follows:

"The county courts of the several counties of this state are hereby authorized, as provided in this Article, to establish, construct, equip, improve, extend, repair and maintain public hospitals, and may issue bonds therefor as authorized by the general law governing the incurring of indebtedness by counties. Provided that in all cases where proceedings for the issuance of county bonds have been initiated to the extent that petitions required by existing law have been circulated and filed with the county court containing the signatures of the requisite number of qualified petitioners and an order by the county court has been made pursuant thereto calling an election and fixing the date thereof under any statute repealed hereby, such election shall be held and the results thereof canvassed and certified pursuant to the statutes under which such proceedings were initiated, and if two-thirds of the qualified voters of the county voting thereon at such election shall vote in favor of incurring such indebtedness and of issuing bonds therefor, such bonds may be issued, sold and delivered under the provisions of the statute pursuant to which such proceedings were initiated, and such proceedings and such bonds so issued, shall be valid; or where the issuance of such bonds has been authorized at an election held prior to the effective date of this act, such bonds may be issued, sold and delivered under the provisions of the statute pursuant to which such proceedings were initiated."

That part of Section 15192 of House Bill No. 756 reading, "and may issue bonds therefor as authorized by the general law governing the incurring of indebtedness by counties," refers to House Committee Substitute for House Bill No. 749 of the 63rd General Assembly.

Section 3292 of House Committee Substitute for House Bill No. 749 provides that any county, by vote of two-thirds of the qualified electors voting thereon, may become indebted in an amount exceeding in any year the income and revenue provided for such year plus any unencumbered balances from previous years, provided such indebtedness shall not exceed five per centum of the value of taxable tangible property therein.

Section 3294 provides that before incurring any indebtedness under the provisions of Section 3292, the county shall provide for the collection of an annual tax sufficient to pay the interest and principal of the indebtedness within twenty years.

Section 3295 provides that any number of qualified electors of the county, not less than one per cent or 300, whichever is greater, as determined by the vote for governor in the county in the last election at which a governor was elected, may present a petition for such election. The county court then orders the election for the purpose set forth in the petition, specifying the time, place and purpose of the election.

Section 3296 provides that the clerk of the court shall give two weeks' notice of the election, such notice to state the time and purpose of the election and the amount of indebtedness to be incurred.

Section 3297 provides the form of the ballot.

Sections 3298 to 3300b provide for the action to be taken by the county court in case two-thirds or more of the qualified voters of such county vote for the incurring of such indebtedness.

These provisions are found in Missouri Revised Statutes Annotated, Sections 3292 to 3300b, inclusive.

From the above set out provisions of House Committee Substitute for House Bill No. 749, it is clear that the petition for the election must be signed by not less than one per cent or 300 taxpayers of the county, whichever number is greater, and that the notice required for such election is two weeks.

Since the provision for holding this election in a county is for incurring indebtedness for county purposes, the additional indebtedness necessary for the erection of a hospital may be incurred at such election. There is no prohibition in these or any other statutes against this procedure.

Further, we find that in the case of State ex rel. Holman v. Trimble, 316 Mo. 1041, 1. c. 1044, the Supreme Court of Missouri said:

" \* \* \* No question is raised as to the regularity of the proceeding by which the county hospital was established and bonds voted for the erection of the hospital. Trustees were properly elected, and were in charge of the hospital and its property. On August 20, 1919, the hospital trustees met with Mr. Bell, the architect, and opened bids for the construction of the hospital. The county had already voted a one-half mill tax. Bonds had already been regularly issued in the sum of \$75,000 for building the hospital. It was found that the bids for the entire work exceeded the amount of the bonds, and another election was had and an additional half-mill tax was voted, and \$37,500 in bonds were issued, making a total of \$112,500 available for building the hospital."

Although the legality of the second election was not questioned in the above quoted case, the court upheld the legality of all the proceedings in the case, and by such action upheld the validity of the second bond issue for the securing of additional money which was found to be necessary for the erection of a hospital.

We find no statutory prohibition against holding the election for the additional hospital bonds and the election for annual distribution of school funds on the same day. Section 3295 of House Committee Substitute for House Bill No. 749 specifically provides that the election for the incurring of the indebtedness may be a special election, or it may be held on the day of any primary or general election authorized to be held by the laws of this state. This department has held that the election for voting for or against the annual distribution of the capital school fund may be held on the day of a primary election. Since either of these elections may be held on a primary election day, there is no reason why both elections cannot be held on the same day, as special elections. The holding of both elections on the same day, in all probability, would result in the participation of more voters of the county in both elections than if each election were held separately, and the greatest participation by the voters in elections is held by the courts to be the intent of the election laws of this state.

CONCLUSION

It is the opinion of this department that the proceedings for voting additional bonds for the county hospital of Barton County are governed by the provisions of House Committee Substitute for House Bill No. 749; that the petition for such election must be signed by not less than one per cent or 300 qualified electors of such county who are taxpayers, whichever number is greater; that two weeks' notice of the election is required, and that the proceedings for the election and issuance of such additional bonds to build the hospital are valid and legal.

It is further the opinion of this department that such election for voting additional bonds for the construction of a county hospital may be held on the same day as an election to vote for or against the annual distribution of the county capital school funds.

Respectfully submitted,

C. B. BURNS, Jr.  
Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
Attorney General

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