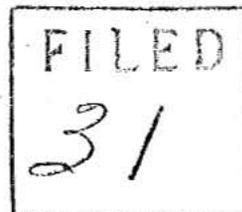


TOWNSHIPS: Election held in Livingston County in ~~November~~ <sup>1946</sup>, on  
ELECTIONS: question of continuing or discontinuing township organiza-  
tion was void since the petition for submission of ques-  
tion of continuing or discontinuing township organization  
was filed less than 60 days before date of such election.

January 23, 1947



Honorable Robert C. Frith  
Prosecuting Attorney  
Livingston County  
Chillicothe, Missouri

Dear Sir:

We acknowledge receipt of a letter from Charles S. Green-  
wood, formerly Prosecuting Attorney of Livingston County, re-  
questing an official opinion of this department, and reading  
as follows:

"The County Court of Livingston County has  
asked me for your written opinion in the  
following matter: On the recent election  
this County voted on the question of adopt-  
ing County organization and the proposition  
carried. It now develops that the petition  
was filed only thirty (30) days before the  
election, whereas under the new law sixty  
(60) days is required.

"The Court wants a statement from you as to  
whether or not this proposition legally car-  
ried under the circumstances or should they  
go ahead on the theory it carried until the  
election is declared illegal by some Court  
action."

The answer to the question propounded in the request for  
an opinion involves a determination of the effect, if any, on  
Section 14023, R. S. No. 1939, of House Bill No. 903, passed  
by the 63rd General Assembly, and effective July 1, 1946.

House Bill No. 903 repeals Sections 13928, 13929 and  
13931, R. S. No. 1939, and enacts three new sections in lieu  
thereof, numbered 13928, 13929 and 13931. Section 13931 of  
said House Bill No. 903 provides as follows:

"Upon petition of at least one hundred qualified electors of any county of the third or fourth classes praying therefor, which said petition shall be filed in the office of the clerk of the county court, the county court of such county shall, by order of record, submit the proposition of the adoption of township organization form of county government to a vote of the electorate of the county at a general election. If such petition shall be filed sixty days or more prior to a general election, the proposition shall be submitted at said general election; if filed less than sixty days before such election, then the proposition shall be submitted at the general election next succeeding said general election. The election shall be conducted, the vote canvassed and the result declared in the same manner as provided by law in respect to elections of county officers. The clerk of the county court shall give notice that a proposition for the adoption of township organization form of county government in the county is to be voted upon by causing a copy of the order of the county court authorizing such election to be published at least once each week for three successive weeks, the last insertion to be not more than one week prior to such election, in some newspaper published in the county where such election is to be held, if there be a paper published in such county, if not, then by posting printed or written handbills in at least two public places in each election precinct in the county at least twenty-one days prior to the date of election. The clerk of the county court shall provide the ballot which shall be printed and substantially in the following form:

OFFICIAL BALLOT

(Check the one for which you wish to vote)

Shall township organization form of county government be adopted in .....County?..... YES : :  
NO : :

If a majority of the electors voting upon the proposition shall vote for the adoption thereof the township organization form of county government shall be declared to have been adopted: Provided, that counties adopting township organization shall be subject to and governed by the provisions of the law relating to township organization on and after the last Tuesday in March next succeeding the election at which such township organization was adopted."

Section 14023, R. S. No. 1939, provides as follows:

"At any general election holden in this state, in any county having adopted township organization under this chapter, upon the petition of one hundred voters of the county, praying the county court to re-submit the question of township organization to the voters at said election, it shall be the duty of the county court to submit the question again at such election, in like manner as provided in article 1 of this chapter; and if it shall appear, after the canvass of the votes as provided in article 1 of this chapter, that a majority of all the votes cast upon that question shall be against township organization, then township organization shall cease in said county; and all laws in force in relation to counties not having township organization shall immediately take effect and be in force in such county."

A determination of the effect of House Bill No. 903 on Section 14023, R. S. No. 1939, involves a construction of whether or not the phrase "in like manner," in Section 14023, refers to the time of holding an election as provided for in Section 14023, and if it be held that the phrase "in like manner" does refer to the time of holding such election, whether or not the time of holding the election on the township question as provided for in House Bill No. 903 is mandatory or permissive.

We believe the rule regarding the meaning of the phrase "in like manner" is correctly expressed in the case of Porter v. Brook, 97 Pac. 645, 1. c. 648:

"Harris et al. v. Doherty, 119 Mass. 142, and State v. McClure, 91 Wis. 313, 64 I. W. 992, are cases in which the word 'manner' was construed as including the element of time. In State v. McClure the language of the statute under consideration reads: 'It shall be the duty of the county board, at its next annual meeting in November, to fix the salary for the sheriff in the same manner as salaries are fixed for other county officers.' It was attempted by the board at its regular annual meeting in November to fix the salary for the sheriff after he had been elected. There existed in the statute of Wisconsin a provision that the county board at its annual meeting in November should fix the salary of every county officer 'who is elected during the ensuing year, and who is entitled to salary from the county treasury, and that such salary shall not be increased or diminished during his term of office.' The matter in controversy in that case was whether the phrase 'in the same manner' required that the board should fix the salary of the sheriff before his election, as provided for the other county officers. The court in the opinion said: 'The word "manner" in a statute may undoubtedly include "time," if such seems to have been the intent of the lawmakers. The intent of the lawmakers here being clearly to make the fixing of the sheriff's salary a part of the general system, we feel obliged to construe the words "in the same manner" as including the element of "time."'

Section 13931 of House Bill No. 903 provides in detail the manner in which the township question shall be submitted for a vote, including the specific election at which such question shall be submitted. It is obvious that the intent of the Legislature, when it enacted Section 13931 of House Bill No. 903, was to provide a complete scheme for the submission of the township question, and that the specific election at which the question is to be submitted for a vote is part of the manner of submitting such question.

Section 13929 of House Bill No. 903 provides, in part, as follows:

" \* \* \* provided further, that all counties of the third and fourth classes which have heretofore adopted or may hereafter adopt township organization form of county government may abolish the same by submitting such proposition to a vote of the electors of the county in the manner provided by law."

The only statute referring to the manner of submitting the township question is Section 13931 of House Bill No. 903. The quoted provision of Section 13929 of House Bill No. 903 clearly can refer only to Section 13931 of House Bill No. 903, and the intent of the Legislature clearly was that any submission of the township question shall be governed by said Section 13931, including the specific election at which such question is to be submitted.

The power of the county court to order the submission of the township question is conferred by Section 13931 of House Bill No. 903, and the action of the county court in submitting such question must be governed entirely by the provisions of the statute. Said Section 13931 provides that the county court shall submit the question at the next general election if the petition for such submission shall be filed sixty days or more prior to a general election, and the county court shall submit the question at the next succeeding general election if the petition shall be filed less than sixty days before a general election.

In the case of State v. City of Maplewood, 99 S. W. (2d) 138, 1. c. 141, we find the following statement regarding the construction to be placed upon the word "shall" when used in statutes:

"The construction to be put upon the word 'shall' depends upon the intention which prompted the Legislature to use such word, as evidenced by the language of the entire statute and the purposes sought to be accomplished thereby."

The Kansas City Court of Appeals said in the case of State v. Webb, 49 Mo. App. 407, 1. c. 410:

" \* \* \* Section 4598, Revised Statutes, 1889 (which is the first section of the local-option law), provides that, 'upon application by petition signed by one-tenth of the qualified voters of any county who

shall reside outside the corporate limits of any city or town having, at the time of such petition, a population of twenty-five hundred inhabitants or more, \* \* \* the county court of such county shall order an election to be held in such county at the usual voting precincts for holding any general election for state officers, to take place within forty days after the reception of such petition, to determine'.

The court further said, l. c. 412:

"By the terms of the first section of the law (which we have quoted above) it is the unqualified mandate of the statute that the county court 'shall order the election to be held in such county \* \* \* to take place within forty days after the reception of such petition.' If, then, this petition was presented to, and received by, the county court, on July 10 (and this is unquestionably true), then an election held in pursuance thereof on August 31--fifty-two days after the reception by the court--was beyond the period fixed by the statute, and, hence, said election was unauthorized and void. This exact point was so held by the St. Louis Court of Appeals in State ex rel. v. Ruark, 34 Mo. App. 325. In a well-considered opinion by Judge Biggs, it was there decided that an election under the local-option law will be void, if appointed and held on a day more than forty days after receipt by the county court of the petition of such election. The statute is mandatory, not merely directory. To the same effect, see decision by the court of appeals of Texas. Ex parte Sublett, 4 S. W. Rep. 894."

The Supreme Court of Missouri said in the case of State ex rel. v. Ellison, 271 Mo. 123, l. c. 129-130:

" \* \* \* It is the law of this State that 'no election can be held unless provided for by law' (State ex rel. v. Jenkins, 43 Mo. l. c. 265), and it is also the law, announced by

the St. Louis Court of Appeals (In re Wooldridge, 30 Mo. App. l. c. 618), and subsequently approved by this court (Ex parte Lucas, 160 Mo. l.c. 280), that a local option election held in a city of over twenty-five hundred inhabitants within forty days of a municipal election is absolutely void and 'has no greater force than no election at all.' In such case this court has declared that an election not held within the proper time was void 'because the courts were acting outside and beyond their respective jurisdictions, and consequently their orders were null and void.' The Wooldridge case is one of those referred to. This court added (State ex rel. v. Patterson, 207 Mo. l.c. 147): 'This is true for the reason that a court of limited jurisdiction, and inferior courts not proceeding according to the course of the common law, are confined strictly to the authority given; and the records of such courts must show the existence of all facts necessary to give jurisdiction.'

\* \* \* \* \*

"County courts have no inherent authority to call local option elections. Their jurisdiction is derived solely from the statute. Section 7238 authorizes, generally, the calling of an election, and Section 7244 specifically prohibits its being called during a named period. The court has no more jurisdiction to call such an election during a period covered by Section 7244 than it would have to call one if there were no Section 7238. Section 7244 is as much a limitation upon Section 7238 as if it had been incorporated therein. It is as much a limitation as the provision that no local option election shall be held within forty days of a municipal or other election. It is a direct negation of the power and jurisdiction of the county court to act in the circumstances named and, in this case, those circumstances appear from the record of the county court and from the opinion of the Court of Appeals. The Court of Appeals proceeds upon the theory that

the case made showed a valid election in 1912. That being true, it showed the condition which brings into operation Section 7244, and that section, when brought into operation, simply negatives the power and jurisdiction of the county court to call another election until the lapse of the specified period. \* \* \*

Applying the reasoning found in the above quoted decisions, it is clear that the statutory provision in Section 13931 of House Bill No. 903, regarding the election at which the county court shall submit the township question, is mandatory, that the county court has no power to submit such question at any election other than the election specified in the statute, that the submission of the township question at an election other than that specified by the statute is a nullity, and that the vote on the township question, when submitted at an election other than that specified in the statute, is wholly void.

#### CONCLUSION

It is, therefore, the opinion of this department that the election held in Livingston County, Missouri, in November, 1946, on the question of continuing or discontinuing township organization, was a void election, since the petition for submission of the question of continuing or discontinuing township organization in such county was filed less than sixty days before such general election.

Respectfully submitted,

C. B. BURNS, Jr.  
Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
Attorney General

CBB:HR