

ELECTIONS!
COUNTY BUDGET :
SCHOOLS (ANNUAL
DISTRIBUTION):

Discretionary with county court to call special election to distribute annually capital of liquidated school fund. Election may be called even though not budgeted.

March 10, 1949

FILED

81

3-14

Hon. W. D. Settle
Prosecuting Attorney
Howard County
Fayette, Missouri

Dear Sir:

This is in reply to your request for an opinion from this department, which reads as follows:

"1. The budget for 1949 has been approved and no provision is made for a special election. Must this proposition be submitted at a special election or can the County Court order the proposition submitted at the general election to be held in November, 1950?

"2. In the event a special election is called, may it be held in conjunction with the annual school election? If so, does the County Court or the school boards elect the judges and clerks?"

Your request involves several questions and we will take them up in order.

1. Must this proposition be submitted at a special election or can the county court order the proposition submitted at the next general election?

In a previous opinion rendered by this office concerning Section 10376, Mo. R. S. A. (Melton - 1947), our conclusion was as follows:

"It is further the opinion of this department that upon petition of the voters of any county or the City of St. Louis as provided by Section 10376.1, Mo. R.S.A.,

*Special
Delivery
Copy to Mr
John*

it is mandatory that the county court call a special election as provided by Section 10376.2, Mo. R.S.A., even though funds have not been set aside in the county budget for this purpose."

At the time the above-mentioned opinion was written the law then in effect read as follows (Laws of Missouri, 1945, pages 876, 877):

"Said proposal shall be submitted at a special election to be held for that purpose within sixty days after the filing of the petition therefor * * *"

The 64th General Assembly, by an act which became effective June 3, 1947, amended this section as follows (Laws of Missouri, 1947, Volume I, page 285):

"Said proposal shall be submitted at a special election to be held for that purpose within sixty days after the filing of the petition therefor or at the next general election held in such county.
* * *" (Underscoring ours.)

Another change made by the amendment in 1947 consisted of a grant of authority to the county courts to consolidate election districts or precincts in their respective counties in relation to an election upon the proposal to distribute annually the capital of the liquidated school funds. Under the law as it formerly read it was mandatory that the county court hold a special election and submit the above proposition to the voters. This special election had to be held within sixty days of the filing of the petition therefor. By the 1947 amendment the Legislature added the underlined words, supra. It is a rule of statutory construction that an amendatory statute should be construed on the theory that the Legislature intended something by the amendment (Holt v. Rea, 52 S.W. (2d) 877, 330 Mo. 1237). We believe that the Legislature intended to remove the mandatory feature which prevailed in the law as written in 1945 and substitute therefor the above provision which would give the county court discretion as to submission of the proposal at a special election or at the next general election held in such county.

2. When is the next general election?

It would seem that, with nothing further, the term "general election" would be construed to mean that which is set out in

Section 655, R. S. Mo. 1939, to wit:

" * * * the term 'general election' refers to the election required to be held on the Tuesday succeeding the first Monday of November, biennially; * * *"

However, the Supreme Court of Missouri, en banc, in the case of *Dysart v. City of St. Louis*, 11 S.W. (2d) 1045, considered a case wherein it discussed the terminology of, and differences between, special elections and general elections. At l.c. 1052 the court said:

"It necessarily means that a special election is one called for a special purpose, not one fixed by law to occur at regular intervals. * * * Therefore it avails nothing to distinguish a primary election from the statutory definition of any other general election."

It seems that the holding of the court in respect to the term "general election" is that it is one which takes place by law at stated times. Therefore, we believe that the court holding in the *Dysart* case indicates that the "next general election" will be the primary election in 1950.

The school election which will be held on April 5, 1949, will not be a general election because the residents of the county will not be voting as a county unit. Some of the voters will be assembling at the annual meeting as provided for in Section 10418, R. S. Mo. 1939, while others will be expressing their opinions in the manner provided for by Section 10483, R. S. Mo. 1939.

3. May the expense incurred in holding a special election be allowed even though the 1949 budget makes no provision therefor?

In your request you state that the budget for 1949 has been approved and no provision is made for a special election. We understand by this that Section 10914, R. S. Mo. 1939, providing for estimated expenditures and classes, has been complied with, that is, that the estimate for this class is not less than the last preceding odd year, which is 1947.

In our former opinion (*Melton - 1947*) we concluded that the rule as set out in the case of *Gill v. Buchanan County*, 142 S.W.

(2d) 665, was applicable in the instance. In that case the court said, l.c. 668, 669:

"Defendant also contends that plaintiff is not entitled to recover because there was not a sufficient amount provided in the 1934 county budget for county court salaries to pay salaries of \$4,500 each. (Only \$840 more than the total of salaries figured at \$3,000 each was included in the salary fund for the county court.) However, as hereinabove noted, salaries of county judges are fixed by the Legislature and the Constitution prevents even the Legislature from changing them during the terms for which they were elected. Surely, the county court cannot change them, by either inadvertently or intentionally providing greater or less amounts in the salary fund in the budget. The action of the Legislature in fixing salaries of county officers is in effect a direction to the county court to include the necessary amounts in the budget. Such statutes are not in conflict with the County Budget Law but must be read and considered with it in construing it. They amount to a mandate to the County Court to budget such amounts. Surely no mere failure to recognize in the budget this annual obligation of the county to pay such salaries could set aside this legislative mandate and prevent the creation of this obligation imposed by proper authority. Certainly such obligations imposed by the Legislature were intended to have priority over other items as to which the county court had discretion to determine whether or not obligations concerning them should be incurred. They must be considered to be in the budget every year because the Legislature has put them in and only the Legislature can take them out or take out any part of these amounts. This court has held that the purpose of the County Budget Law was 'to compel * * * county courts to comply with the constitutional provision, section 12, art. 10' by providing 'ways and means for a county to record the obligations incurred and thereby

enable it to keep the expenditures within the income.' Traub v. Buchanan County, 341 Mo. 727, 108 S.W. 2d 340, 342.

"To properly accomplish that purpose, mandatory obligations imposed by the Legislature and other essential charges should be first budgeted, and then any balance may be appropriated for other purposes as to which there is discretionary power. Failure to budget funds for the full amount of salaries due officers of the county, under the applicable law, which the county court must obey, cannot bar the right to be paid the balance. Instead, it must be the discretionary obligations incurred for other purposes which are invalid, rather than the mandatory obligation imposed by the same authority which imposed the budget requirements. We, therefore, hold that a county court's failure to budget the proper amounts necessary to pay in full all county officers' salaries fixed by the Legislature, does not affect the county's obligation to pay them."

We believe that even though the county court has not budgeted funds for the expenses necessarily incurred in the holding of a special election that, if the county court in its discretion determines to submit the issue to the voters at a special election, such sums must necessarily be made available for this purpose. If such were not the law, an absurd situation could develop with regard to a carrying out of the provisions of the Legislature in connection with the distribution of the liquidated school fund. Suppose, for an example, a petition was submitted to the county court on March 1, 1950, after the budget for 1950 had been approved, without provisions having been made for the payment of expenses curtailed in such election. If the county court decided to submit the issue at a special election within sixty days there would be certain expenses involved; likewise if the county court decided to submit the issue at the next general election there would also be expense involved, even though not as great. To say that funds would not be available for the submission of the issue to the voters would be going contrary to the rule laid down by the Supreme Court in the Gill v. Buchanan County case, supra. As was said in the case of State v. Smith, 182 S.W. (2d) 571, at l.c. 574:

" * * * All of these acts, the Budget Act, the Purchasing Agent Act and the County Budget Act, were passed at the same session in 1933. Their primary purpose was to regulate the usual operation of the regular departments of Government whose needs could be foreseen and planned on a biennial basis. * * *"

If a sum sufficient to conduct such special election was not set aside in classification two of the county budget, which is to include expenditures for elections, these expenditures must be made out of funds presently in classes five and six.

4. In the event a special election is called, may it be held in conjunction with the annual school election?

We believe that the answer to this question is to be found in the first sentence of the section providing for the submission of the issue under discussion. Said first sentence reads as follows (Laws of Missouri, 1947, Volume I, page 285):

"Said proposal shall be submitted at a special election to be held for that purpose within sixty days after the filing of the petition therefor or at the next general election held in such county.
* * *" (Underscoring ours.)

It has come to our attention that the petition was filed on February 1, 1949, and counting sixty days from that date, we find that the election must be held on or before April 2, 1949. The school election will not be held until April 5, 1949, therefore the special election may not be held in conjunction with the annual school election.

Conclusion.

Therefore, it is the opinion of this department that it is discretionary with the county court to call a special election upon the proposition to distribute annually the capital of the liquidated school fund or to submit said issue at the next general election held in the county. Speaking as of this date, the next general election will be the primary election.

Hon. W. D. Settle

-7-

to be held in August, 1950. The county court may call the special election even though funds have not been set aside in the county budget for that purpose.

Respectfully submitted,

JOHN R. BATY
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

JRB:ml