

SPECIAL : Method of election of commissioners to be de-
ROAD DISTRICT: termined by Board of Commissioners.

January 16, 1950.

1/23/50

Honorable William Lee Dodd,
Prosecuting Attorney
Ripley County,
Doniphan, Missouri.



Dear Mr. Dodd:

Your recent letter regarding the balloting in an election of a commissioner for the Jordan Special Road District reads as follows:

"On January 3, 1950, Jordan Special Road District held an election to elect a new commissioner. Ed. Brooks, a commissioner had ballots printed (3 ballots enclosed) for the election with his name printed on it and a square in front of his name and space to write in a name. Ballot No. I was voted with no X in front or any markings at all. Ballot No. II was voted with an X in the square. Ballot No. III was voted by marking out Ed. Brooks and writing in Phillip Davis. I want to know if Ballot No. I is legal should be counted as a vote for Ed. Brooks. The County Clerk does not know whether to swear in Ed. Brooks or not."

From your inquiry we assume that this special road district was organized under Article 11, Chapter 46 of the 1939 Revised Statutes.

It will be noted that the body formed under the provisions of this article, operating through its commissioners, possesses the usual powers of a public corporation for public purposes. The selection of commissioners for such special road districts formed under the provisions of this article is provided by section 8712, which, insofar as it applies to your question, provides as follows:

"At the term of court in which such order is made, or at any subsequent term thereafter, the court shall appoint three commissioners, who shall be residents of the district and owners of land within the district, who shall hold their office until the first Tuesday after the first Monday in January thereafter; and on said date the voters of the district, at an hour and place to be filed by said commissioners, shall elect three commissioners, one of whom shall serve one year, one for two years and one for three years, and on the first Tuesday after the first Monday in January each year thereafter they

shall elect a commissioner to take the place of the one whose term is about to expire, who shall serve three years.* * *

Section 8710 of this article provides that "every such district organized according to the provisions of this article shall be a body corporate and possess the usual powers of a public corporation for public purposes * * *."

This article indicates that such bodies are authorized to conduct their business as a public corporation for public purposes and would, therefore, be empowered to determine the procedure for their elections. We think this rule is supported by the announcement of the Supreme Court in the case of State ex inf. West ex rel. Thompson v. Hefferson, 148 S.W. 90, 243 Mo. 442. The court said:

"We have already intimated in the first paragraph of this opinion the Legislature was careful to provide in the act creating this district that it should be 'a political subdivision of the state for governmental purposes,' as well as 'a body corporate,' with 'the usual powers of a corporation for public purposes,' so that it is not even relegated to the class of public quasi corporations, with which such subdivisions for special purposes are usually content to be classified. Although its general powers were vested in a board of commissioners, it did not, with equal care, prescribe the particular manner in which the elections for its members should be held. It did, however, prescribe qualifications for electors different from those prescribed in section 2, art. 8, of the state Constitution, thus indicating the express intention that they should not be governed by the general election laws of the state. The commissioners are to call these elections and indicate the time and place of their holding; and the implication is clear that the manner of taking, as well as ascertaining and recording, the result of the vote is left to that body.* * *"

Since this article does not prescribe the particular manner in which the election for commissioners should be held but leaves that to be determined by the corporate body itself, this office cannot render a more complete discussion on the validity of the ballots cast.

If you care to send to this office all the minutes of this body which deal with the manner of elections, we might be better enabled to render an opinion. We suggest you read the case cited above, if you have not done so already. It may help you decide the

questions presented.

As requested, the ballots enclosed with your letter are returned herewith.

CONCLUSION.

The Board of Commissioners of a special road district organized under Article 11, Chapter 46, Revised Statutes of Missouri, 1939, should determine the manner of taking, ascertaining and recording the vote in an election of Commissioner.

Respectfully submitted,

JOHN E. MILLS
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney-General

JEM/LD

