

SCHOOLS
ELECTIONS

Notice of special election in common school district entitled "special school meeting" instead of "special school election," and concluding election within one hour after opening of special school meeting, are mere irregularities and will not justify the State Auditor in refusing to register bonds voted at such election under Section 3306, R. S. Missouri, 1939.

June 28, 1950

7/1/50



Honorable W. H. Holmes
State Auditor
Jefferson City, Missouri

Dear Sir:

We have received your request for an opinion of this department, which is as follows:

"Recently there was submitted to this Office for registration 10 Bonds aggregating the sum of \$11,875.00, issued by the Sherwood School District No. 87, Greene County, Missouri, dated June 1, 1950. We understand a copy of the transcript relating to this issue is now in your Office.

"We refused to register the above described bonds and they were returned to Mr. Clarence E. Billings, a member of Sherwood School Board on June 17, 1950, for the following reasons quoted from our letter to Mr. Billings:

"1. Your notice was for a 'Special School Meeting' whereas, it should have been for a 'Special School Election.'

"2. Your special school meeting was convened at 2:00 P.M. and according to the transcript it continued until the hour of 3 o'clock. We are of the opinion that one hour was not a reasonable length of time, within the meaning of the law, for an election such as this.

"We wish to have an opinion from your Office as to whether or not our action in the above matter was justified according to the proceedings as shown in the transcript."

A transcript of the proceedings authorizing the bond issue in question has been made available to this office as we review

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your action in refusing to register the bonds under the provisions of Article 6, Chapter 16, R. S. Missouri, 1939. Your refusal to register the bonds under consideration is based solely on the two following alleged deficiencies:

- (a) that the notice calling for the election was entitled "special school meeting," whereas you contend that it was mandatory for the notice to be entitled "special school election"; and
- (b) that the special school meeting was convened at 2:00 p.m. and continued only to the hour of 3:00 p.m. on the day appointed for the election.

The subject school district, Sherwood School District No. 87, Greene County, Missouri, is a common school district governed specifically by the provisions of Article 3, Chapter 72, R. S. Missouri, 1939, and generally amenable to the general school law found at Article 2, Chapter 72, R. S. Missouri, 1939.

Section 3306, Article 6, Chapter 16, R. S. Missouri, 1939, provides as follows:

"Before any bond, hereafter issued by any county, township, city, town, village or school district or special road district or by virtue of the provisions of articles 1, 3, 6, 7 and 8, Chap. 79, R. S. 1939, for any purpose whatever, shall obtain validity or be negotiated, such bonds shall first be presented to the state auditor, who shall register the same in a book or books, provided for that purpose, in the same manner as state bonds are now registered, and who shall certify by endorsement of such bond that all conditions of the laws have been complied with in its issue, if that be the case, and also that the conditions of the contract, under which they were ordered to be issued, have also been complied with and the evidence of that fact shall be filed and preserved by the auditor. Such bonds after receiving the

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said certificate of the auditor as herein provided, shall thereafter be held, in every action, suit or proceeding in which their validity is, or may be, brought into question, prima facie, valid and binding obligations, and in every action brought to enforce collection of such bond, the certificate of such auditor, or a duly certified copy thereof, shall be admitted and received in evidence of the validity of such bonds, together with the coupons thereto attached: Provided, the only defense which can be offered against the validity of such bonds shall be for forgery or fraud. But this section shall not be construed to give validity to any such bonds as may be issued in excess of the limit fixed by the Constitution, or contrary to its provisions, but all such bonds shall, to the extent of such excess, be held void; and provided further, that the remedy of injunction shall also lie at the instance of any taxpayer of the respective city, town, village, township or school district to prevent the registration of any bonds, alleged to be illegally issued or funded under any of the provisions of this article."

In the case of Arkansas-Missouri Power Corp. v. City of Potosi, 196 S.W. (2d) 152, 355 Mo. 356, decided by the Supreme Court of Missouri in 1946, the plaintiffs sought to enjoin the issuance, registration, and purchase of general obligation bonds of the City of Potosi, Missouri, the object of said bond issue being the erection or purchase of an electric light plant. The plaintiffs contended that they could maintain their suit under the provisions of Section 3306, R. S. Missouri, 1939, Article 6 of Chapter 16, on "registration of bonds," and providing, in part, that interested taxpayers may by injunction "prevent the registration of any bonds, alleged to be illegally issued or founded under any of the provisions of this article." In ruling against plaintiffs' contention, the court spoke as follows at 355 Mo. 1. c. 361:

" * * * This provision has been on the statutes of this State as far back as 1889. See R. S.

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1889, sec. 847. Plaintiffs do not direct our attention to any instance wherein it has been applied to issues similar to those now presented. We think, as stated upon an analogous issue in State ex rel. v. Waltner (Banc), 340 Mo. 137, 144, 100 S.W. 2nd 272, 276, that the Missouri cases are and the understanding of the bench and bar of this State is that the financing arrangements of Missouri counties, cities and other political subdivisions cannot be interrupted by proceedings in equity enjoining the issuance of bonds upon a challenge of the vote by which they were authorized. The statutes invoked refer only to the regularity of the proceedings underlying the bonds, and to the constitutional limitations upon such indebtedness."

No provision contained in Section 3306, R. S. Missouri, 1939, authorizes the State Auditor to refuse registration of bonds solely on the ground of some irregularity occurring in the bond election. It is true that the Auditor certifies, by endorsement on the bond issue, that all conditions of the laws have been complied with in their issue, if that be the case; but since the State Auditor is not vested with judicial power in any degree, his review touching an irregularity of the proceedings underlying the bond issue should be carefully circumscribed by constitutional and statutory provisions which set out the steps to be taken in effecting a legal bond issue. Your refusal to register the bonds in this instance is not based on any charge that a mandatory provision of any particular statute or constitutional provision has not been complied with.

In the instant case the notice calling for the election clearly stated the purpose of the meeting, and the fact that the word "meeting" was used instead of the word "election" could not have mislead reasonable minds. In Peter v. Kaufmann, 38 S.W. (2d) 1062, 327 Mo. 915, l.c. 923, the following is stated relative to sufficiency of notices:

"It is these notices which the voters see and consult in order to determine what propositions are to be voted on and decided at the annual meeting, and if the notices impart intelligent information as to this, that is all that is required."

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Section 10418 and 10419, R. S. Missouri, 1939, contained in the law applicable to common schools, refer to the annual meeting of such school districts. Such meetings correspond to annual school elections of larger school districts. Section 10328, R. S. Missouri, 1939, contained in the general school law, authorizes a school board to borrow money and issue bonds for the purposes of erecting schoolhouses and buying school sites. The statute further provides that "the question of loan shall be decided at an annual school meeting or at a special election to be held for that purpose." The use of the word "meeting" when calling for an annual meeting or a special election is no innovation on the law applicable to common schools, but is the proper method of referring to an annual election or a special election to be conducted in a common school district.

The public notice calling the special school meeting in this instance conformed to that set out under section 10418, R. S. Missouri, 1939, of the law applicable to common school districts insofar as it designated the specific time when the meeting would convene, to-wit, 2:00 p.m. of the designated election day. The statute just referred to does not set out a specific time for closing the meeting convened by notice given thereunder, nor do we find any statutory direction in this matter. Voters within the common school district were duly notified of the time of the election meeting. In this instance 26 votes were cast for the loan and 13 votes against it. There is nothing in the record to indicate that anyone who desired to vote was restrained from voting by reason of closing the meeting at 3:00 p.m., the time when the election officials deemed it proper to close the meeting. To rule that the meeting was not continued for a reasonable length of time is to allow the State Auditor to implement the statute by a rule of his own choice. Invoking such a rule is tantamount to charging that the election was tainted by fraud. In the case of State ex rel. Buckley et al. v. Thompson, 322 Mo. 248, 19 S.W. (2d) 714, the State Auditor successfully resisted the claim that he should register certain school district bonds, but in that case his refusal to register and certify the bonds was based on his contention that the school district was not a consolidated school district, and that it had no power to issue said bonds because of the invalidity of the organization of said school district. Such a situation is not analogous to the situation at hand. In the Thompson case, cited supra, we find the State Auditor refusing to register the bonds for reasons affecting the regularity of the proceedings underlying the bonds and the right and power of the school district to incur such indebtedness. In this case the State Auditor relies solely on irregularities which do not in themselves contravene any applicable statute.

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CONCLUSION

It is the opinion of this department that the State Auditor has exceeded his authority under Section 3306, R. S. Missouri, 1939, in refusing to register bonds issued by Sherwood District No. 87 of Greene County, Missouri, a common school district, such bonds being authorized at an election held on May 4, 1950, on the sole grounds that (a) the notice calling for the election was denominated a "special school meeting" instead of being denominated a "special school election"; and (b) that a reasonable time was not allowed for voters to attend and cast their ballots at the meeting which was convened at 2:00 p.m. on the date of the election and was concluded one hour later at 3:00 p.m., such contentions disclosing only irregularities and not affecting the regularity of the proceedings underlying the bonds or touching the right and authority of the school district to incur such indebtedness.

Respectfully submitted,

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APPROVED:

J. E. TAYLOR
Attorney General

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