

BOND ELECTIONS; Form of
ballot. County bond elections.

: The form of the constitutional
: ballot may not be used in sub-
: mitting a county bond issue to
: the voters. The proposition
: should be placed on a separate
: ballot, printed and in the form
: prescribed in Section 108.060,
: RSMo 1949.



October 17, 1952

10/24/52 ✓

Honorable John P. Ryan
Assistant County Counselor
Jackson County
Kansas City, Missouri

Dear Mr. Ryan:

This will be the opinion you recently requested from this office whether a proposed county bond issue proposition of Jackson County, Missouri, should be placed on the constitutional ballot, and whether, in that behalf, Section 125.050, RSMo 1949, providing for the placing of every other proposition submitted to voters at the General Election, other than constitutional amendments, on the form of the constitutional ballot, nullifies or supersedes Section 108.060, RSMo 1949, which section prescribes a separate and specific form of the ballot and the manner in which it is to be printed for the submission of a county bond proposition to the electorate. Your letter requesting the opinion, reads as follows:

"Jackson County has five propositions to issue the bonds of Jackson County in the total sum of \$2,325,000.00. The City of Kansas City, Missouri has several propositions for amending the charter of said city and also has one bond proposition.

"The Election Commissioners this morning took the position that the county bond propositions must be placed on the constitutional ballot with the city amendments and the city bond issue.

"We take the position that Section 108.060 R.S. Mo. 1949 has provided a specific method for the form of the ballot and the manner in which it is to be printed and that the Election Commissioners have nothing to do with them except as to distribution and counting of same. The proposition of the city both as to amendments and bonds provide for a

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'For' and 'Against' answer and provide that the boxes are to be placed to the left of the propositions. The propositions of the county as set out in Section 108.060 provide for a 'Yes' and 'No' answer and also that the boxes be placed to the right of the ballot. To place these conflicting and contrasting proposals on the same ballot would be confusing to the voter.

"Will your office give us an opinion on these three questions:

"1. Does Section 125.050 nullify or supersede Section 108.060 R.S. Mo. 1949?

"2. Must the county bond propositions be placed on the constitutional ballot?

"3. If you hold that all of these propositions have to be on one ballot, do the county bond propositions take precedence in numerical position over the city amendments and the city bond issue, having in mind that the city has submitted to the Election Commissioners their proposed charter amendments and proposed bond issue prior to that of the county?

"Because of the immediate necessity of preparing these ballots for the ensuing election, I would appreciate your answering these questions as soon as possible. I would also like to have you send a copy of your opinion to the Board of Election Commissioners of Kansas City, Missouri, Jackson County Court House, Kansas City, Missouri."

It is apparent that, since the Election Commissioners take the position, as recited in your letter, that the county bond proposition must be placed on the constitutional ballot with the city amendments and city bond issue, and since your letter submits the direct question whether Section 125.050,

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RSMo 1949 nullifies or supersedes Section 108.060, RSMo 1949, the position taken by the Election Commissioners is based upon the sentence in said Section 125.050 which, after providing for the form of the constitutional ballot and its use in submitting constitutional amendments, states the following:

"* * * Every other proposition, including referendum and initiative measures, to be submitted at the general election shall be proposed and submitted on the 'Constitutional Ballot,' as herein provided, if any proposed constitutional amendments are submitted at such election or not. * * * ."

The immediate question to be resolved here is, whether said Section 125.050 in providing that every other proposition submitted at the General Election shall be proposed and submitted on the constitutional ballot nullifies or supersedes Section 108.060, RSMo 1949, which provides a definite and particular method for the submission of a county bond issue to the voters of the county and which provides that, in the submission of such bond issue the County Court shall prepare and have printed the following form of ballot which shall be used, to-wit:

"OFFICIAL BALLOT"

"Instructions to voters:

"To cast a ballot in favor of the proposition submitted upon this ballot place a cross (X) mark in the square opposite the word 'Yes'; to vote against the proposition submitted upon this ballot place a cross (X) mark in the square opposite the word 'No.'"

"Shall the following be adopted:

"Proposition to issue the bonds of..... YES
(Insert name).....county to the amount
of \$....for the purpose of.....(Insert purpose) NO

The Supreme Court of Missouri had before it for construction this identical sentence as it appeared in Section 4944, R.S. Mo. 1919. The Court ruled upon its meaning and effect, with respect to other independent statutes which provide specific procedure for submitting other and different propositions to the

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people at the General Election, in the case of State ex inf. Barrett, Attorney General vs. Robert Imhoff, et al., 291 Mo. 603, 238 S.W. 122. Our citations here will refer to 291 Mo. 603. That case was an application for a writ of quo warranto brought in the Supreme Court to oust from office certain township officers of Wright County, Missouri. An election had been held in Wright County, Missouri, on the question submitted of adoption of township organization in that county. The Attorney General questioned the validity of the election in his petition for a writ upon two grounds. One, that the order of the County Court submitting the question to the people was insufficient in failing to show that a petition signed by more than one hundred voters of Wright County had been filed with the County Court and that, therefore, the order of the County Court in calling the election for the submission of the proposition was invalid.

The second objection to the validity of the proceedings and said election raised by the Attorney General was that the question was not submitted on the constitutional ballot as provided by Section 4944, R.S. Mo. 1919, but was printed at the bottom of the ticket containing the names of candidates for various offices to be voted for at said election. The Court took jurisdiction in the proceeding and held that the petition and the order of the County Court ordering the election were sufficient. We are not here directly concerned with that question, but refer to it in passing, only to say that the Court held the petition, the order of the county court and the election thereunder, valid.

The Court then considered the question raised by the Attorney General as to the manner of the submission to the voters of the county of the adoption or rejection of township organization. The Court recited in its opinion that a statute enacted with special reference to that subject and which had been in force since its enactment in 1879 (Laws of Missouri, 1879, page 218), and which was in force at the time of the calling and holding of said election in Wright County, was Section 13165, R.S. Mo. 1919, and which authorized any County Court, on petition of one hundred legal voters of said county, to cause to be submitted to the voters of the county the question of township organization, by the ballot, to be written or printed "'For township organization'" or "'Against township organization'", to be canvassed and returned in like manner as votes for state and county offices. It was under this statute, the Court states, that the question of township organization was submitted and that the officers sought to be ousted were elected.

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The relator contended that Section 4944, having been enacted subsequently to Section 13165, repealed the latter section and that, therefore, Section 4944 constituted the mode of procedure to be observed by county courts in the submission of the question of the adoption of township organization to the voters. The Court held that there was no repeal by implication, neither were there words in Section 4944 expressly repealing Section 13165, which express words or other equally effective evidence of the intention of the Legislature to repeal Section 13165 must necessarily have been in Section 4944 to effect a repeal. The Court in its discussion of that question and in holding that there was no repeal, either express or implied, of the previously enacted township organization statute, l.c. 616, 617, said:

"It is not contended, however, that there was a failure to comply with this section, but that a compliance therewith was unauthorized in that the question should have been submitted under a provision of what is now Section 4944, Revised Statutes 1919, enacted in 1909 (Laws 1909, p. 492), subsequently amended, but not in regard to the provision here under consideration. This section is embodied in and, so far as all of its material features are concerned, constitutes the statute regulating the manner in which constitutional amendments or the adoption of a new constitution is required to be submitted. Inserted in this section, and upon which relator relies to sustain his contention, is the following provision: 'Every other proposition to be submitted at the general election shall be proposed and submitted on the "constitutional ballot," as herein provided, if any proposed constitutional amendments are submitted at such election or not.'

"While not so expressly stated, the operative effect of this provision, according to relator's contention, must in its final analysis rest upon the rule of construction that Section 4944, having been enacted subsequently to Section 13165, repeals the latter and therefore constitutes the mode of procedure to be observed by county courts in the submission of township organization to the voters.

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"In the absence of any words in the enactment of Section 4944 declaratory of a legislative purpose to repeal all former acts prescribing the manner in which propositions other than constitutional amendments are to be submitted to the people, the effect, if any, of the adoption of said section upon Section 13165 must be by implication. It being necessary that there be present in the later act such declaratory words or some other equally cogent evidence of a purpose on the part of the Legislature to repeal the earlier section in the adoption of the later. Cases illustrative of the rule requiring such words or the presence of such an intention are found in the interpretation of acts prescribing a form of ballot in a particular case in an election for the organization of a village, the establishment of a high school district or the issuance of bonds of a county; in each of which cases it was held that the acts especially applicable thereto were not repealed by subsequent general laws which prescribed a form of ballot other than that required by the particular statute. * * * (Citing cases.)

The Court did hold the said sentence in Section 4944, R.S. Mo. 1919, invalid, because the title of the Bill enacting said constitutional ballot section contained no words indicating that the body of the section would require that: "Every other proposition, including referendum and initiative measures, to be submitted at the general election shall be proposed and submitted on the 'Constitutional Ballot,'" Section 125.050, RSMo 1949, contains the same precise sentence and in other respects is the same section as was Section 4944. This section was numbered Section 11680, R.S. Mo. 1939. That section was repealed, Laws of Missouri, 1949, page 261, and a new section in lieu thereof, to be known as Section 11680 was enacted. The title of the new section does now refer to "other propositions, or other subjects" as well as constitutional amendments, referendum and initiative measures. The Court discussed in its decision the vital question of which of the two Acts should be followed with respect to procedure to be pursued in the submission at the General Election of other propositions provided for in separate, independent statutes, such as Section 13165, providing for township organization elections, and held that

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Section 13165 should be followed in its decision of the case.

The Court ruled in that case that, because there were no express words in said Section 4944, the then constitutional ballot statute, repealing Section 13165, the then township organization statute, and, that since Section 13165 had special application to a particular subject, and since said Section 4944 was general in its terms and if standing alone would contain the same matter and thereby conflict with the independent statute, Section 13165, that the latter must be, and was, construed by the Court to be an exception from the terms of Section 4944, and, therefore, was not subject to the terms of said Section 4944, and should control in the decision of the question.

The Court on these principles involved in such conflict, and in expressing its disapproval of the impropriety of attempting to amend statutes especially applicable to particular subjects by enacting sections, general in their nature, without express words repealing the special statutes, l.c. 617, 618, further held:

"Aside from what has been said as to the absence of any declaratory words or other expressed purpose to repeal the particular statute of which Section 13165 is a part by the enactment of the provision in question incorporated in Section 4944, the matter still presenting itself for determination is as to which of these acts prescribes the course of procedure to be pursued by the county court.

"That the two statutes are in conflict, it is evident. We have said, not once, but a number of times, that where there are two acts and the provisions of one have special application to a particular subject and the other is general in its terms and if standing alone would include the same matter and thus conflict with the special act, then the latter must be construed as excepted out of the provisions of the general act, and hence not affected by the enactment of the latter. This, of course, on the assumption that the general act is in other respects valid and would, but for the exception, suffice to

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prescribe thereafter the county court's course of procedure. (Hurlburt v. Bush, 284 Mo. 397; State ex rel. Jones v. Chariton Dr. Dist., 252 Mo. l.c. 353; State ex inf. Major v. Amick, 247 Mo. l.c. 292.)

"The manner, here attempted to be pursued, of amending statutes especially applicable to particular subjects, of which we have many in the body of our law, aside from the question of the validity of the one here under consideration, which we will discuss later, should not receive judicial sanction; first, because as we have shown it violates well recognized canons of construction; and, second, because it can only result in confusion or misunderstanding as to the application of the amendment until it has been judicially construed or supplemented by further legislation."

It follows that the ruling of the Court in the Barrett case is conclusively in point and applicable here. Section 108.060, RSMo 1949, provides a particular method to be followed in the printing of the ballot and the form of the ballot to be used in county bond elections. There are no words in Section 125.050, our present constitutional ballot statute, repealing Section 108.060. The two sections conflict in the form of the ballot prescribed in each of the two sections upon which the county bond issue shall be submitted. It is plain, therefore, that under the decision of the Supreme Court in the Barrett case, Section 108.060 must be held to be an exception to Section 125.050, and, therefore, not affected by the terms of Section 125.050.

The ruling of the Court in the Barrett case holding a township organization election valid where the proposition to adopt or reject township organization was submitted on the party candidates' ballots disregarding the terms of said Section 4944, constitutes a conclusive and continuing precedent for this opinion to hold, and we do so hold, that the printing of the ballot and the form of ballot to be used in the submission to the electorate of a county bond issue proposition will likewise be valid as provided and in the form of ballot prescribed in

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Section 108.060, RSMo 1949, a statute relating specifically to that subject and to disregard in such proceedings the terms of said Section 125.050 providing that: "Every other proposition, including referendum and initiative measures, to be submitted at the general election shall be proposed and submitted on the 'Constitutional Ballot,' as herein provided, if any proposed constitutional amendments are submitted at such election or not."

Considering the statutes themselves and the decision of the Supreme Court in the Barrett case it is clear that Section 125.050 requiring that "Every other proposition, including referendum and initiative measures, to be submitted at the general election shall be proposed and submitted on the 'Constitutional Ballot'" does not nullify or supersede Section 108.060, RSMo 1949, which provides a specific method for the form of the ballot and the manner in which it shall be printed in the submission of a county bond proposition to the electors of Jackson County, Missouri, at the General Election to be held in said county in the State of Missouri on November 4, 1952, and that such Section 108.060 constitutes an exception to Section 125.050, RSMo 1949, and should be followed in said bond election.

CONCLUSION.

Considering the premises, it is the opinion of this Department:

- 1) That the constitutional ballot section, 125.050, RSMo 1949, does not nullify or supersede Section 108.060, RSMo 1949;
- 2) That the proposed county bond issue proposition to be submitted to the voters of Jackson County, Missouri, at the General Election held in said county on November 4, 1952, should not be placed on the constitutional ballot nor in the form thereof, under the terms of Section 125.050, RSMo 1949;
- 3) That Section 108.060, RSMo 1949, as an independent statute dealing with a specific subject, constitutes an exception to Section 125.050, RSMo 1949, and that said county bond issue proposition should be submitted to the voters of said county on a separate ballot, printed and in the form

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as prescribed in Section 108.060, RSMo 1949, disregarding
the provisions of said Section 125.050.

Respectfully submitted,

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Assistant Attorney General

APPROVED:



J. E. TAYLOR
Attorney General

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