

SCHOOLS:
ELECTIONS:
ABSENTEE BALLOTS:

Absentee ballots may be cast in school elections on question of issuing bonds or increasing tax rate. Application for absentee ballots made to official charged with furnishing regular ballots. Absentee ballots counted by canvassers appointed by body or officials charged with duty of canvassing election returns.



June 19, 1953

copy

Honorable Robert E. Crist
Prosecuting Attorney
Shelby County
Shelbina, Missouri

Dear Sir:

This is in answer to your letter of recent date requesting an official opinion of this office and reading as follows:

"Will you please advise as to the procedure for counting absentee ballots at a school election, which is held under Chapter 165, R. S. Mo. 1949, if absentee ballots are permitted. I know of no provisions for absentee ballots at school elections."

In answer to a request for further information, you sent the following supplemental request:

"Pursuant to your letter of April 22, 1953, I would like for your opinion to relate specifically to Sections 165.040 and 165.080. I am particularly interested in knowing the procedure for voting such absentee ballots and for counting the same."

Section 165.040, RSMo 1949, provides in part as follows:

"1. For the purpose of purchasing schoolhouse sites, erecting schoolhouses, library buildings and furnishing the same, and building

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additions to or repairing old buildings, the board of directors shall be authorized to borrow money, and issue bonds for the payment thereof, in the manner herein provided. The question of loan shall be decided at an annual school meeting or at a special election to be held for that purpose. Notice of said election shall be given at least fifteen days before the same shall be held, by at least five written or printed notices, posted in five public places in the school district where said election shall be held, and the amount of the loan required, and for what purposes; it shall be the duty of the clerk to sign and post said notices. The qualified voters at said election shall vote by ballot. Those voting in favor of the loan shall have written or printed on their tickets, 'For the loan;' those voting against the loan, the words 'Against the loan,' and if two-thirds of the votes cast on the proposition shall be for the loan, the district board shall be vested with the power to borrow money, in the name of the district, to the amount and for the purpose specified in the notices aforesaid, subject to the restrictions of section 165.043.

"2. When bonds are voted under this section for the erection of one or more schoolhouses, to be erected on the same or different sites in common school districts, said bonds shall not be negotiated by said board until said bonds have been deposited with the county or township in which said district shall be situated, and upon the order of said board, and the payment to the county or township treasurer of the amount agreed to be received for the same by said board from the persons loaning said money upon said bonds. * * *"

Section 165.080, Laws of Missouri, 1951, page 469, provides as follows:

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"Whenever it shall become necessary, in the judgment of the board of directors or board of education of any school district in this state, to increase the annual rate of taxation, authorized by the constitution for district purposes without voter approval, or when a number of the qualified voters of the district equal to ten per cent or more of the number casting their votes for the directors of the school board at the last school election in said district shall petition the board, in writing, for an increase of said rate, such board shall determine the rate of taxation necessary to be levied in excess of said authorized rate, and the purpose or purposes for which such increase is required, specifying separately the rate of increase required for each purpose, and the number of years, not in excess of four, for which each proposed excess rate is to be effective, and shall submit to the qualified voters of the district, at the annual school meeting or election, or at a special meeting or election called and held for that purpose, at the usual place or places of holding elections for members of such board, whether the rate of taxation shall be increased as proposed by said board, due notice having been given as required by section 165.200; and if the necessary majority of the qualified voters voting thereon, as required by article X, section 11 of the constitution, shall favor the proposed increase for any purpose, the result of such vote, including the rate of taxation so voted in such district for each purpose, and the number of years said rate is to be effective, shall be certified by the clerk or secretary of such board or district to the clerk of the county court of the proper county, who shall, on receipt thereof, proceed to assess

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and carry out the amount so returned on the tax books on all taxable property, real and personal, of such school district, as shown by the last annual assessment for state and county purposes, including all statements of merchants as provided by law."

We are enclosing copies of official opinions rendered under date of January 31, 1951, to William L. Hungate, March 21, 1951, to James T. Riley, and June 8, 1951, to Earl A. Baer, which opinions we believe will answer your question as to the right of an individual to cast absentee ballots at school elections. We are, of course, in this opinion ruling only as to casting absentee ballots on the two questions of public policy found in Sections 165.040 and 165.080, that is, voting for the issuance of bonds and voting for an increased tax levy. We believe that the enclosed opinions make it clear that absentee ballots may be cast at the elections provided for in Sections 165.040 and 165.080, supra.

You will note also that the opinion of January 31, 1951, to William L. Hungate, answers your question as to the proper person to supply the absentee ballots. Such opinion holds that the person or body charged with the duty of furnishing the ordinary ballots at such election is the proper person or body to whom application should be made for absentee ballots.

Section 112.070, RSMo 1949, provides in part as follows:

"In cases of elections wherein the county clerk and his assistants or board of election commissioners, as the case may be, are not charged with the duty of canvassing the returns of such elections, the body or officials, charged by law with such duty for such elections, shall appoint not less than four disinterested persons, not more than one-half of whom shall be of the same political faith, from a list furnished to said body or officials by the central committee of each of the two dominant political parties, double the number required for appointment, not later than six o'clock p.m. of the day next succeeding the day of such election; provided, that if any political party, through its committee, shall fail to

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present a list of names as aforesaid, within the time aforesaid, then said body or officials may select and appoint the requisite number provided by law for said party, to open, canvass, count and certify the votes cast by absent voters at such election, and the provisions of chapter lll, RSMo 1949, insofar as applicable thereto, shall apply and govern in such elections. * * * "

We believe that the provisions of such section are applicable in the counting of the absentee ballots cast at such school elections, but we do not believe that the provisions of such section providing that not more than one-half of the canvassers shall be of the same political faith are applicable, since school elections are not partisan political elections but are conducted without reference to political parties.

CONCLUSION

It is the opinion of this office that absentee ballots may be cast at school elections on the questions of issuance of bonds and increase of tax levy; that the application for absentee ballots to be cast at such elections should be made to the person or body which furnishes the ordinary ballots to be cast at such elections; and that the canvassers of the absentee ballots should be appointed by the body or officials charged by law with the duty of canvassing the returns of such elections.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Mr. C. B. Burns, Jr.

Very truly yours,

JOHN M. DALTON
Attorney General

Enclosures (3)

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