

STOCK LAW:  
ELECTIONS:

Proposition to invoke stock law by two or more townships, under Section 270.130 RSMo 1949, submitted at general election, requires vote of majority of voters in townships who vote at such general election to effect adoption. Mere majority of voters voting on the proposition is insufficient.



November 11, 1954

Honorable W. R. J. Hughes  
Prosecuting Attorney  
Iron County  
Box 214  
Ironton, Missouri

Dear Mr. Hughes:

This opinion is rendered in reply to your request of November 8, 1954, and the question you posed is briefly restated in the following language:

When two or more townships have petitioned the county court for the privilege of voting on the question of restraining animals from running at large, under the provisions of Section 270.130 RSMo 1949, and such proposition has been submitted to the voters at the time a general election is held, will a majority of the qualified voters voting in the township on the proposition cause it to carry, or must the proposition be voted by a majority of all voters voting in the townships at the general election?

Section 270.130 RSMo 1949 provides as follows:

"Whenever two or more townships in one body in any county in the state of Missouri, by petition of one hundred householders, not less than ten of whom shall be from any one of said townships, petition the county court for the privilege to vote on the question of restraining horses, mules, asses, cattle, goats, swine and sheep from running at large,

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the same law governing counties is hereby applied to said townships, and said petitioners shall not be debarred the right to restrain said animals if a majority of the qualified voters of said townships, voting at any general or special election, shall vote in favor of so restraining such animals. Nothing in this section shall be so construed as to debar the right of restraining any two or more species of such animals; provided, however, that nothing in this section or chapter shall be construed to prevent the petitioning for and holding of an election to permit animals to run at large in any township or townships that have voted to restrain said animals from running at large, notwithstanding the county or township has theretofore voted to restrain animals from running at large."

In the case of State ex rel. v. Wilson, 129 Mo. App. 242, 108 S.W. 128, the St. Louis Court of Appeals was construing Section 4788 R.S. Mo. 1899, which contained the following language now found in Section 270.130 RSMo 1949, supra:

"\* \* \* and said petitioners shall not be debarred the right to restrain said animals if a majority of the qualified voters of said townships, voting at any general or special election, shall vote in favor of so restraining such animals. \* \* \*"

The above quoted provision is now found unchanged in Section 270.130 RSMo 1949, and we consider the facts outlined in State ex rel. v. Wilson, supra, to be no different from those involved in the problem we now consider, to-wit, that the proposition was submitted at a general election. In ruling the question, the Court adopted the following language of the trial judge in State ex rel. v. Wilson, 108 S.W. 128, 129 Mo. App. 242, l.c. 246:

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" \* \* it is evident that the Legislature intended to require more to adopt the stock law by townships than by counties, that is, it may be adopted in a county by a majority of the qualified voters who vote on the proposition, but in order to adopt it in five townships, there must be in favor of the proposition a majority of the voters voting at the election. It appears by the return to the writ of certiorari in this case that the vote on the proposition was taken at the general election held November 8, 1906, and that there were polled at such election 2,030 votes, of which 903 voted in favor of the proposition. This not being a majority of the voters voting at such election, the law was not adopted'."

CONCLUSION

It is the opinion of this office that when a proposition to restrain animals from running at large is submitted to the voters of two or more townships, under the provisions of Section 270.130 RSMo 1949, at a general election, the proposition will not carry unless voted by a majority of the qualified voters of such townships who cast their vote in the general election, as distinguished from a majority of the qualified voters of such townships who vote only on the proposition submitted at such general election.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Julian L. O'Malley.

Yours very truly,

JOHN M. DALTON  
Attorney General

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