

ELECTIONS:
SALE OF INTOXI-
CATING LIQUOR:

It is illegal to dispense intoxicating liquor within the hours prescribed on the election day of any school director, fire prevention district director or sewer district trustee.



June 10, 1954

Honorable George White
Assistant Prosecuting Attorney
St. Louis County
Courthouse
Clayton, Missouri

Dear Sir:

We are in receipt of your recent request for an official opinion based upon a letter written to your office at the direction of Arthur C. Mosley, Sheriff of St. Louis County. The Mosley letter reads as follows:

"We have been informed by Asst. Prosecuting Attorney, Leonard Bornschein that on election days all 5% Taverns, Liquor Stores, must remain closed and 3.2% Taverns may remain open as usual. We have been enforcing the law as such.

"We have received complaints from different tavern operators that they were informed by the local office of Liquor Control, State of Missouri, that in such elections as for school trustees, fire trustees, and sewer board members, it is not necessary for them to close. Tavern owners were informed by the Liquor Control, inasmuch as there is not a bond issue and any money involved in the election that they may continue to stay open.

"The local office of Liquor Control was contacted and they informed us that they believe that the Attorney General gave them a verbal opinion, some time ago, and that is what they base their advice to tavern owners on."

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We note that reference is made above to "school trustees;" "fire district trustees"; and "sewer district trustees." Section 165.207 and 165.380 RSMo. 1949, uses the term "school Directors"; Section 321.120 RSMo 1949, uses the term "fire district directors;" and Section 249.140 RSMo 1949 uses the term "sewer district trustees."

These are perhaps minor differences, but in this opinion we shall hereafter use the statutory terms.

Your specific questions are whether places selling intoxicating liquor must remain closed during the election of school directors, fire district directors, and sewer district trustees? The prohibition which you mention is found in Section 311.290 RSMo 1949, and reads as follows:

"No person having a license under the provisions of this law shall sell, give away or otherwise dispose of or suffer the same to be done upon or about his premises, any intoxicating liquor in any quantity between the hours of 1:30 A.M. and 6:00 A.M. on week days and between the hours of twelve o'clock midnight Saturday and twelve o'clock midnight Sunday, or upon the day of any general, special or primary election in this state, or upon any county township, city, town or municipal election day, and if said person has a license to sell intoxicating liquor by the drink his premises shall be and remain a closed place as defined in this section upon the day of any general, special or primary election in this state or upon any county, township, city, town or municipal election day and between the hours of 1:30 A.M. and 6:00 A.M. on week days and twelve o'clock midnight Saturday and twelve o'clock midnight Sunday; provided, that the sale of intoxicating liquor may be resumed and the premises reopened on any such election day after the expiration of thirty minutes next following the hour or time fixed by law for the closing of the polls at any such election; and provided further, that where such licenses

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authorizing the sale of intoxicating liquor by the drink are held by clubs or hotels this section shall apply only to the room or rooms in which intoxicating liquor is dispensed; and, provided further, that where such licenses are held by restaurants whose business is conducted in one room only and substantial quantities of food and merchandise, other than intoxicating liquors are dispensed, then the licensee shall keep securely locked during the hours and on the days herein specified all refrigerators, cabinets, cases, boxes and taps from which intoxicating liquor is dispensed. A 'closed place' is defined to mean a place where all doors are locked and where no patrons are in the place or about the premises. Any person violating any provision of this section shall be deemed guilty of a misdemeanor."

From the above it is clear that if an election is a general, special or primary election in this state, or is a county, township, city, town or municipal election, that it is illegal to dispense intoxicating liquor on such election day, during the hours prescribed; but that if the election does not fall within any of the above categories, then intoxicating liquor may be dispensed on such election day.

In this regard we note further that the election of school directors shall be held at two o'clock p.m. on the first Tuesday in April of each year, as set by statute.

The first board of directors of the fire protection district, may, by Section 321.120 RSMo 1949, "be held separately, or may be consolidated and held concurrently with any other election, general or special, provided for in this chapter or otherwise." Such an election would, therefore, either be general or special. All further elections for fire protection directors shall (Section 321.210 RSMo 1949) be held on the first Monday in April of each year. The provisions for the election of the first board of sewer district trustees is substantially the same as that of the election of the first board of directors of a fire prevention district. Subsequent

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elections are fixed by statute (Section 249.150 RSMo 1949) to be held on the first Monday in April every two years.

With the above in mind, we now direct attention to the 1928 Missouri Supreme Court case of *Dysart vs. City of St. Louis*, 11 S.W. (2d) 1045. In that case the court was concerned, in part, with the definition of general, special and primary elections. In the course of its opinion the court stated at l.c. 1052:

"* * * But the definition of 'general election' is settled by an amendment to the Constitution adopted in 1920 (see Laws 1921, p. 703), by which section 12 of article 10 was repealed, and another section by the same number adopted. It provides:

"'No county, city, town, township, school district or other political * * * subdivision of the State shall * * * become indebted,' except by a two-thirds vote at an election held for that purpose; and, 'such proposition may be submitted at any election, general or special.'

"It follows that any local election, city, county, etc., may be either general or special, and this wipes out the definition of 'general election' in section 7058, or limits the implied distinction to state elections.

"It necessarily means that a special election is one called for a special purpose, not one fixed by law to occur at regular intervals. A primary election and a regular election are connected together in section 35 in regard to general registration, with the same requirement for a revision before a primary election as there is before a final election to elect officers. Therefore it avails nothing to distinguish a primary election from the statutory definition of any other general elections.* * *"

In view of the above it would appear that the elections for school directors, fire protection district directors, and sewer district trustees, which are held after the first such elections, are "general elections" within the meaning of Section 311.290, supra, and that the first elections held for the purpose of selecting these officials, if held on a day specially chosen for this

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purpose, and not on the day of any general election, is a "special election", within the meaning of Section 311.290, supra, and that whether the elections be general or special they come within the prohibition of Section 311.290, supra, and that it is illegal for any person to dispense intoxicating liquor on such days, within the hours prescribed.

CONCLUSION

It is the opinion of this department that it is illegal to dispense intoxicating liquor within the hours prescribed on the election day of any school director, fire prevention district director, or sewer district trustee.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Hugh P. Williamson.

Very truly yours,

JOHN M. DALTON
Attorney General

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