

ANIMALS: : Householders within an incorporated city of the
STOCK LAW: : fourth class, which city has a stock law, are
ELECTIONS: : qualified to petition the county court for a
PETITIONERS: : county-wide election on the question of restraint
: of domestic animals, under Section 270.090, RSMo
: 1949.

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April 5, 1955

Honorable Robert L. Carr
Prosecuting Attorney
Washington County
Potosi, Missouri

Dear Mr. Carr:

Your letter of March 18, 1955, requesting an opinion of this office reads:

"The Presiding Judge of the County Court of Washington County has directed me to request the opinion of your office as to whether residents of an incorporated city of the fourth class within this County, which said city already has a stock law in effect, are qualified petitioners to cause the County Court to submit to the qualified voters of the entire County the question of enforcing the provisions of Chapter 270 of the Revised Statutes of Missouri, 1949.

"Section 270.090, Revised Statutes of Missouri, 1949, on this point, has been questioned by the Court, and I have been specifically directed to request the opinion of your office of this point."

Section 270.090, RSMo 1949, provides:

"The county court of any county in this state, upon the petition of one hundred householders of such county, at a general election, and may upon such petition of one hundred householders, at a special election, called for that purpose, cause to be submitted to the qualified voters

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of such county the question of enforcing, in such county, the provisions of this chapter. Said petitioners shall state in their petition to said court what species of the domestic animals enumerated in section 270.010 they desire the provisions of this chapter enforced against, and may include one or more of said animals in said petition; and said court shall cause notice to be given that such vote will be taken, by publishing notice of the same in a newspaper published in such county, for three weeks consecutively, the last insertion of which shall be at least ten days before the day of such election, and by posting up printed notices thereof at three of the most public places in each township in such county, at least twenty days before said election; said notices shall state what species of domestic animals on which the vote will be taken, to enforce the provisions of this chapter against running at large in such county, which shall be the same as petitioned for to said court."

The above statute provides for an election upon petition "of one hundred householders of such county", submitting to the "qualified voters of such county" the question of restraint of domestic animals. The statute creates no direct exclusion of city householders from the qualified petitioners, and we can find no basis upon which an implied exclusion can be erected. If it had been the intention of the Legislature to exclude householders of a city wherein a stock law exists, it is believed that the Legislature would have so provided.

Our conclusion is substantiated by the case of State ex rel. Sturgeon vs. Bishop, 195 Mo. App. 30, 189 S.W. 593. In that case, certain of the townships had adopted the stock law, and the question was raised whether the voters of such townships were eligible to vote in a county-wide election, and whether householders in such townships were eligible petitioners. The court held that persons in townships previously adopting the stock law, were, nevertheless, eligible to participate in a county-wide election on the same question, saying, l.c. 33, 34:

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"* * * The citizens of the townships having adopted the stock law are yet interested in the question of its adoption in the whole county, and, because of having themselves adopted it, are none the less qualified to vote at the general election. The fact that the voters of certain townships are forced to accept less than county-wide restraint of animals from running at large should not deprive them of the right to aid in obtaining the greater benefit when it is possible."

* * * * *

"* * * Upon the record before us it is conceded that the petition and all the proceedings are regular if the householders of the townships having adopted the law are qualified to participate therein. As the matter now stands before us it appears that all matters in which the county court may exercise its discretion have been disposed of and that the only duty left to be performed is that of proceeding with the election.
* * *."

And, in *Weaver et al. vs. Bryan*, 225 Mo. App. 385, 35 S.W.(2d) 639, it was said, l.c. 640:

"We shall now consider plaintiffs' objections to the legality of this election in inverse order. Objection No. 3 is based on the contention that, since Beaver Dam township already had adopted the stock law, and it was then in force in that township, it could not be included and coupled with the other three townships in an election of this kind. This court has ruled against that contention in *State ex rel. v. Bishop*, 195 Mo. App. 30, 189 S.W. 593, and we still hold to that position. This holding also disposes adversely to appellants of a minor contention by them that, since there are two incorporated towns in the territory which have ordinances restraining domestic animals from running at large, the voters of these towns could not vote at this election.

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Section 270.090, supra, requires the petition be signed by not less than one hundred householders. It should be noted that "resident" and "householder" are not necessarily synonymous terms. In *State vs. Pemberton*, 235 Mo. App. 1128, 151 S.W. (2d) 111, the court, in construing a statute requiring an election on the question of imposing a dog tax, upon petition of not less than one hundred householders, said, *l.c.* 115:

"The word 'householder' must be given its legal interpretation and effect. In other words, what is the natural and obvious import of the word or what did the legislature intend by the qualification expressed by the word?

"The natural and obvious import of the word 'householder' is that of head of the family. *Words and Phrases, Second Series, Vol. 2, p. 919*, says of the word 'household' that 'it embraces a household composed of parents, children, or domestics; in short, every collective body of persons living together within one curtilage subsisting in common and directing their attention to a common object. *Robbins v. Bangor Ry. & Electric Co.*, 100 Me. 496, 62 A. 136, 141, 1 L.R.A. (N.S) 963 (citing 3 *Words and Phrases (First Series)*, p. 2673, and cases cited).' (See 19 *Words and Phrases, Permanent Edition*, p. 702)

"The common and generally accepted meaning of the term 'householder' embraces the idea of anyone, man or woman, who maintains a home in the community. It follows that there may be a number of voters in a home and only one householder."

CONCLUSION

It is, therefore, the opinion of this office that householders within an incorporated city of the fourth class, which city has a stock law, are qualified to petition

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the county court for a county-wide election on the question of restraint of domestic animals, under Section 270.090, RSMo 1949.

The foregoing, which I hereby approve, was prepared by my Assistant, Mr. Paul McGhee.

Yours very truly,

JOHN M. DALTON
Attorney General

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