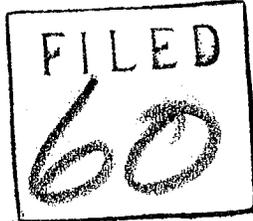


SCHOOLS: In third class cities of less than ten  
SCHOOL DISTRICTS: thousand population, may have separate  
ELECTIONS: polling places for school election and  
municipal election.



April 7, 1955

*See op  
32, March 10, 1958  
to Gornholz.*

Honorable Charles W. Medley  
Prosecuting Attorney  
St. Francois County  
Farmington, Missouri

Dear Mr. Medley:

This is in response to your request for an opinion dated February 23, 1955, which reads, in part, as follows:

"Could you please give me an attorney general's opinion on the following question:

"Is it legal to have separate polling places for school elections and city elections both held on the same day in April in a third class city?"

This question could only arise if the school district in question was either a city or town district. Hence, your question concerns an interpretation of Section 165.330, MoRS, Cum. Supp. 1953, the pertinent portion of which reads as follows:

"1. The qualified voters of such town, city or consolidated school district shall vote by ballot upon all questions provided by law for submission at the annual school meetings, and such election shall be held on the first Tuesday in April of each year, and at such convenient place or places within the district as the board may designate, beginning at six o'clock a.m. and closing at seven o'clock p.m. of said day. \* \* \*

"2. All propositions submitted at said annual meeting may be voted for upon one and the same ballot, and necessary poll books shall be made out and furnished by

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the secretary of the board; provided, that in all cities and towns having a population exceeding two thousand and not exceeding seventy-five thousand inhabitants, said elections may at the option of the board be held at the same time and places as the election for municipal officers with the judges and clerks of such municipal election serving as judges and clerks of said school election, but the ballots for said school election shall be upon separate pieces of paper and deposited in a separate ballot box kept for that purpose.

"3. \* \* \* provided, that if there shall be any other incorporated city or town included in such school district, there shall be at least one polling place within such other incorporated city or town and said school election shall be conducted within the limits of such other incorporated city or town in the same manner as hereinbefore provided for cities or towns having a population exceeding two thousand and not exceeding seventy-five thousand inhabitants."

You have informed us by telephone that the city of the third class, about which you inquire, has a population of less than ten thousand and that, therefore, there is no question with regard to registration of voters.

The above section was construed in the case of *Armantrout v. Bohon*, 162 S.W. (2d) 867. In that case only one polling place was established for the city of Hannibal in a school election at which a county superintendent was being elected. In refuting the contention that the board of education had abused its discretion in not establishing more polling places for the city of Hannibal the court said, l.c. 871:

"As we understand it, the appellant does not contend that any mandatory law, constitutional or statutory, was violated and we are unable to find any such violation from her allegations. The quoted statute (Sec. 10483, R.S. Mo. 1939, Mo. R.S.A. Sec. 10483) says the voting shall be 'at such convenient place or places \* \* \* as the

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board may designate.' It may 'at the option of the board' be held at the same time and place as city elections are held in certain counties. But none of these provisions may be construed as mandatory. It does not appear that any city elections were being conducted at the time. There are times conceivably, when one voting place in Hannibal would be adequate for the submission of school matters to the voters of the district, although we doubt that to be the case when there is contest over the office of county superintendent. But even so, we cannot say that the board's designation of only one voting place in that district was a violation of any mandatory provision of the law, even though it did not provide places easily accessible and convenient to the voters. The board may not have used the best judgment in selecting voting places but that only one place was designated, in this instance and under the circumstances, is not such an abuse of their discretion, or disregard of the election laws that the election may be invalidated for this reason. 18 Am. Jur., Sec. 113, p. 251; Kerlin v. Devils Lake, 25 N.D. 207, 141 N.W. 756, Ann. Cas. 1915C, 648. \* \* \*

Section 165.330, supra, vests the board of education of a school district with the discretion of designating the polling places for the annual school election and provides that at the option of the board such election may in cities and towns having a population exceeding two thousand and not exceeding seventy-five thousand inhabitants be held at the same time and places as the election for municipal officers. There is, however, no mandatory requirement that the polling places in such cities be the same for municipal elections as for school elections. Therefore, we deem it clear that it is legal to have separate polling places for school elections and city elections both held on the same day in April in a third class city having a population of less than ten thousand.

#### CONCLUSION

It is the opinion of this office that the board of education of a school district may designate polling places in the annual

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school election separate and apart from the polling places established for the election of municipal officers in cities of the third class having a population of less than ten thousand.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, John W. English.

Yours very truly,

JOHN M. DALTON  
Attorney General

JWI:ml