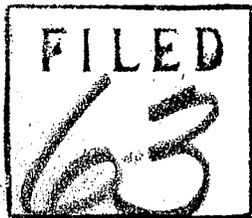


ANIMALS:
MISSOURI
STOCK LAW:

A township may hold an election as to whether the stock law is to be retained in such township even though the township has previously voted to adopt the stock law or even though the county in which the township is located has had such an election, has voted to adopt the stock law. Also, once a county has voted to adopt the stock law, there is no authority for it to again vote upon the same issue.



September 24, 1956

Honorable Richard D. Moore
Prosecuting Attorney
Howell County
West Plains, Missouri

Dear Mr. Moore:

Your recent request for an official opinion reads:

"Last primary election, under county wide election, this county voted in favor of restraining animals from running at large under the provisions of Chapter 270, RS 49. After the election, the County Clerk published notice that the law would be in force within ninety days after the primary election to give people ample time to make provisions to restrain their livestock.

"Now the County Court has received petitions from several separate townships asking for elections in these separate individual townships on the question of the restraining of livestock. They have also received a petition asking for another election on a county wide basis.

"Could you please give me your opinion as to whether or not the petition for another election on a township basis would lie before the law restraining the livestock on a county wide basis became operative at the end of the ninety day period? Also, if the County Court receives petitions for an election on a township basis and a petition for election on a county wide basis at the same time, which petition would prevail?

"It is my understanding that under the recent cases, a township election would

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be permitted on a question of whether or not to let the animals run at large even though there had been a county wide election in which it was voted to restrain them from running at large. Would you let me know if this is your view on the matter?"

All references to statutes in this opinion will be to Revised Statutes of Missouri, 1949, unless otherwise indicated.

The law providing for the holding of a county-wide election to vote upon the proposition as to whether the stock law shall be adopted is found in Section 270.090, which reads:

"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 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 notice 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

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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 law providing for the holding of township elections to determine whether the stock law shall be adopted in those townships (or if the stock law has been previously adopted to determine whether it shall be continued or rejected) is found in Section 270.130, which reads:

"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, 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." (Emphasis ours.)

The underlined portion of the above section makes it amply plain that such an election may be called to vote on the matter of whether the stock law shall be retained or

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rejected even though the county has previously voted to adopt the stock law.

This was not always the situation. In 1941 the Springfield Court of Appeals rendered a decision in the case of State v. Statler, 146 S.W. 2d 853. At l. c. 855, of that opinion, the court stated:

"Reduced to its simplest form, the question for determination is whether or not the statute makes any provision for a county that has adopted the provisions of the law restraining stock from running at large, to then petition for another vote, or whether any three of the townships in such county may petition for and be allowed another vote upon such question?

"We have been cited several cases where different provisions, as to what is commonly referred to as the stock law, have been discussed by the courts of this state. Among these cases are State ex rel. Browning v. Juden, Mo. App., 264 S.W. 101; State ex rel. Sturgeon v. Bishop, 195 Mo. App. 30, 189 S. W. 593; Weaver v. Bryan, 225 Mo. App. 385, 35 S.W. 2d 639; Wells v. Null, 208 Mo. App. 650, 235 S.W. 464; State ex rel. Rippee v. Forest, 177 Mo. App. 245, 162 S.W. 706. This last case gives a history of stock law legislation.

"None of these cases are applicable to the facts in this case. So far as we can ascertain, none of the cases cited, nor have we found any, that are applicable to a case that is an attempt to set aside the stock law that has once been approved by the voters of a county. We are not unmindful of the vote of the people in the three townships involved in this proceeding. The vote being 85 for the stock law to 1368 against it. But as we read the statutory law, we find no statutory provision of any

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kind that provides for the repeal of the law in a county, or in any part of a county after the law has been approved as it admittedly was done in this case. If the people in these three townships should have relief from what they think is an unpopular law, their remedy is with the legislature to obtain legislation along such lines."

This case was tried under the 1929 statutes and, we believe, reached the correct result in view of the statutes upon which the opinion was based. However, in 1945, the 63rd General Assembly amended the stock law by adding a new section (14470a, Volume 1, page 106) which reads:

"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, 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 article 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."

In 1947, the 64th General Assembly further amended the stock law by Section 14470a (Volume 1, page 28, Laws of Missouri) which reads:

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"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, 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 article 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."

This last amendment, it will be noted, brings the law up to its present form, with the result, as is plainly stated in the law, that a township, even though it has previously adopted the stock law, or is located in a county which has wholly adopted the stock law, may, upon proper petition, vote upon the proposition whether the law is to be retained or rejected.

We do not find any authority for a county to hold an election on this matter once it has had such an election and has voted to adopt the stock law. The Statler case, referred to above, held that it did not have such authority. Section 270.130, enacted and amended subsequent to the Statler decision, clearly gave that right to townships, but not, so far as we can see, to counties.

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CONCLUSION

It is the opinion of this department that a township may hold an election as to whether the stock law is to be retained in such township, even though the township has previously voted to adopt the stock law, or even though the county in which the township is located has had such an election, has voted to adopt the stock law.

It is the further opinion of this department that once a county has voted to adopt the stock law, there is no authority for it to again vote upon the same issue.

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

Yours very truly,

John M. Dalton
Attorney General

HPW:lc