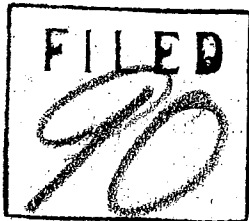


SCHOOL ELECTION:
BALLOT:
NOTICE OF ELECTION:



(1) All propositions to be voted on may appear on one ballot under Section 165.330, Cum. Supp. 1955. (2) Only the levy which was not properly advertised need be resubmitted for a vote. Neither the levy for the building fund nor the election of board members need be resubmitted to a vote. (3) The election of board members would not be void where only one blank space was provided for two write-in candidates. (4) That part of the election, which is in compliance with the requirements of the law, is valid irrespective of the fact that other parts of the election are invalid.

May 22, 1956

Honorable Ernest "Jack" Troutman
Prosecuting Attorney
Carroll County
Carrollton, Missouri

Dear Sir:

This will acknowledge receipt of your opinion request of April 30, 1956, and your statement of facts of May 3, 1956, in which you ask the following:

"An opinion is respectfully requested concerning the following situation:

"The Reorganized School District R-V at Bosworth, Carroll County, Missouri, held their annual school election during April, 1956. The election had been advertised as calling for an election of two board members and an election on a levy of an additional 25¢ for the incidental fund. The actual ballot has been described as containing only one blank line to be used to vote for a write-in candidate. Others swear that the ballot contained two blank lines for the write-ins. Also appearing on the same ballot was a place for the voters to vote for a levy of 25¢ for the teachers fund and a levy of 10¢ for the incidental fund. Following the election the discrepancy between the advertised levy and the levy appearing on the actual ballot was pointed out to the school authorities and a new election has been called for May 10, 1956, for the purpose only of revoting on the tax levy.

"The questions to which we request answers are these:

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1. Should the election for board members have appeared on a separate ballot from the election on the tax levy? If so, is the election thereby void?

2. Under the above described circumstances may the tax levy alone be re-submitted to the voters or must the entire election, including that for board members, be resubmitted?

3. Assuming only one blank space existed for the two write-in candidates for board members, would that render that portion of the election void?

4. Assuming two blank spaces were available for the purpose of write-ins for directors, does the fact that part of the ballot was in error, render the entire election void and make an entire new election necessary?

"It is respectfully requested that this opinion be expedited insofar as you can."

"I regret to inform you that the facts previously given me, and appearing in the above captioned letter, are somewhat in error.

"The errors occur in the information given you concerning the proposed tax levy. The true facts concerning the proposed levy are this:

"The advertised levy was '25¢ for incidental fund and 10¢ for building fund.' The ballot afforded the voters an opportunity to vote on '25¢ for teachers fund and 10¢ for building fund.'

"The re-election has been called to vote on the 25¢ levy only.

"The other facts contained in my letter of April 30th are the same. And the questions asked are the same."

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The answer to your first question is that all propositions submitted may be voted for on the same ballot. See subsection 2 of Section 165.330, Cum. Supp. 1955, which reads in part as follows:

"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 the secretary of the board; * * *"

In the third and fourth questions, the issue is raised concerning blank spaces for write-in candidates. See the case of *Armantrout vs. Bohon*, 162 S.W. 2d 867, where it was stated that elections are not lightly set aside. The Supreme Court of Missouri, at l.c. 871 said:

"(8-10) As the appellant suggests, 'elections should be so held as to afford a free and fair expression of the popular will.' *State ex inf. McKittrick v. Stoner*, 347 Mo. 242, 146 S.W. 2d 891, 894. But 'elections are not lightly set aside' and there is a vast difference in passing on the rules and regulations regarding the conduct of an election before the election is held and after. 29 C.J.S., *Elections*, Sec. 249, p. 360; 18 Am. Jur., Sec. 206, p. 319. As a general rule an election will not be annulled even if certain provisions of the law regarding elections have not been strictly followed in the absence of fraud. *State ex rel. Miles v. Ellison*, supra. As to whether the election was conducted in accordance with the law the matter is aptly covered in *Breuninger v. Hill*, 277 Mo. 239, *Loc. Cit.* 247, 210 S.W. 67, *loc. cit.* 69: 'A first essential, therefore, in the determination of the matter at issue, is whether any of the mandatory provisions of the Constitution or statutes regulating the rights of voters and the calling and conduct of the election, have been violated.'

"(11,12) As we understand it, the appellant does not contend that any mandatory law, constitutional or statutory, was violated and we

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are unable to find any such violation from her allegations. The quoted statute (Sec. 10483, R.S.No. 1939, Mo. R.S.A. Section 10483) says the voting shall be 'at such convenient place or places * * * as the 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 a 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. * * *

From the above quotation, it can be seen that elections will not be set aside for failure to provide blank spaces on the ballot for write-in candidates, unless there is a mandatory requirement of such. There are no mandatory requirements for such in the statutes and therefore, the election is not invalidated for failure to provide the write-in lines on the ballot.

The second question is directed toward that part of the election which was not properly advertised. As to the additional levy of tax rate increase, there is a discrepancy between the notice thereof and the proposition as it appeared on the ballot. The validity of said tax rate increase is to be determined by looking at the applicable constitutional and statutory provisions.

An increase in tax rates in school districts is provided for in Article X, Section 11 (c) of the Constitution of Missouri as amended in 1950, when submitted to a vote. Section 165.080, Cum. Supp. 1955, provides for the method of increasing the rate

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of taxation which is authorized by the Constitution, and among other things, requires due notice to be given as required by Section 165.200.

Section 165.200, RSMo 1949, reads as follows:

"The annual meeting of each school district shall be held on the first Tuesday in April of each year, at the district schoolhouse commencing at two o'clock p.m. If no schoolhouse is located within the district, the place of meeting shall be designated by notices, posted in five public places within the district fifteen days previous to such annual meeting, or by notice for same length of time in all the newspapers published in the district, giving the time, place and purposes of such meeting."

The latter two sections, in respect to an increase in the rate of taxation, have been construed as being mandatory in that the notice must substantially comply with said sections. In the case of Young vs. Brasfield, 228 S.W. 283, no newspaper publication was had, and but four notices were posted of a special election held in a school district on the question of increasing the tax levy. The levy thereunder was void.

See also the case of State ex rel. School District of Affton vs. Smith, 80 S.W. 2d 858, 336 Mo. 703, where the proposition voted on was consolidation of school districts. The court held that where the statutes require notice, any action taken by the voters without notice or with an insufficient notice is void.

Under the authority of the above cases, notice of an increase in the rate of taxation was required. No notice having been given as required for the increase in the teachers' fund which, in fact, was voted, said levy is invalid. This must be resubmitted.

The increase for the building fund was advertised and properly submitted to a vote. It need not be resubmitted.

CONCLUSION

It is, therefore, the opinion of this office that:

(1) All propositions to be voted on may appear on one ballot under Section 165.330, Cum. Supp. 1955.

(2) Only the levy which was not properly advertised need be resubmitted for a vote. Neither the levy for the building

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fund nor the election of board members need be resubmitted to a vote.

(3) The election of board members would not be void where only one blank space was provided for two write-in candidates.

(4) That part of the election, which is in compliance with the requirements of the law, is valid irrespective of the fact that other parts of the election are invalid.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Harold L. Henry.

Yours very truly,

JOHN M. DALTON
Attorney General

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