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SCHOOL DISTRICT ELECTIONS:  
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Whenever a school district, located primarily but not wholly, within a third class city holds its annual election in conjunction with the city's annual election, the school board shall be responsible for those election expenses which are in addition to the election expenses normally expended by the city for an election.

August 25, 1960



Honorable John W. Mitchell, Secretary  
Jackson County Board of Election Commissioners  
Courthouse  
Independence, Missouri

Dear Mr. Mitchell:

I am in receipt of your letter dated June 24, 1960, in which you quote in full the letter of Mr. Rufus Burrus. Mr. Burrus' letter requesting our opinion is as follows:

"Request for your opinion about division of costs of election to be held on April 5, 1960, wherein the City of Independence, (a City of the third class) and the School District No. 30, of Independence, Missouri (a six director school district with High School), have issues to be submitted. The Jackson County Board of Election Commissioners is the agency authorized to hold the annual election for officers, city levy authorization and bond election for the City of Independence on April 5, 1960.

"The School District has its annual election for directors, and for a levy authorization on the same day, April 5, 1960. The boundaries of the School District do not coincide with the boundaries of the City of Independence, although a major part of the School District lies in the limits of the City. The School election by virtue of paragraph 4, of Section 165.315, Laws of Missouri 1955, p. 570, is required to be "conducted as provided in section 165.467, R.S. Mo. 1955, p. 570, Sec. 1". Sec. 165.467, (R.S. Mo. 1955, p. 570) par. 3 provides for certain expenses to be "at the expense of the School District." This Board of Election Commissioners provide "voting machines" and "permanent registration lists of voters,"

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and therefore "ballot boxes" and "poll books and voters' identification certificates" are not used.

"There will be one ballot printed for the voting machine, with the City officers and propositions appearing thereon, and the School officers and proposition will also appear thereon. There are 6 officers and 2 propositions for the City, and 4 officers and one proposition for the School District.

"There will be the expense of delivering about 45 voting machines to the voting places, and there will be judges and clerks in each polling place and there will be rental of some polling places. There will be Deputy Election Commissioners on duty that day and at least 2 men to dispatch the voting machines and to receive them when returned. There are expenses for the return of supplies from the various precincts. There will be a printing of sample ballots with instructions to be placed in the polling places.

"Will you please advise this Board what part of the above expenses, if any, should be charged to the School District and what part shall be charged to the City?

"Does the School District have any authority to expend its funds for any election costs not enumerated in 165.467, and do such costs as above enumerated come within those enumerated in 165.467."

The questions raised in Mr. Burrus' letter are predicated upon the applicability of Section 165.467, RSMo, Cum. Supp. 1957. It is submitted that Section 165.467 is not relevant because Section 165.315, RSMo, Cum. Supp. 1957 no longer applies to School District No. 30, of Independence, Missouri. This reasoning is based on the statement made by Mr. Burrus that "The boundaries of the School District do not coincide with the boundaries of the City of Independence, although a major part of the School District lies in the limits of the city."

Section 165.315, reads as follows:

"1. In any school district in a third class

city now or hereafter having more than thirty-five thousand inhabitants, candidates for school directors may be nominated by a majority of the members-elect residing in the school district of each political party committee of the city in which the school district is located.

"2. A certificate of nomination signed by the chairman of the party city committee or by a majority of the members-elect of the committee, giving the names of the candidates and certifying that they have been selected by a majority of all the members-elect of the committee shall be filed with the secretary of the board of education not later than ten days before the election. Any vacancy in the nomination by resignation, death or otherwise, occurring after the filing of the certificate and before the election, may be filled by the proper committee and an affidavit shall be made by one or more members of the committee covering all of the facts, and presented to the judge of the circuit court, who shall grant, under his hand and seal of the court, a certificate covering the facts which certificate shall be filed with the secretary of the board of education.

"3. Directors for such school districts may also be nominated by petition signed by a number of qualified voters in the city which shall equal four per cent of the total vote cast for mayor at the next preceding mayoral election.

"4. All elections for school directors shall be conducted as provided in section 165.467, RSMo." (Emphasis added.)

A reasonable interpretation of the phrase "in a third class city" would seem to include only that which is within, and to exclude that which is without or only partly within. In Mackay v. Commonwealth Casualty Co., 224 Mo.App. 1100, 34 SW2d 564, the court said at page 566 of the reporter:

" \* \* \*We find in Webster's Dictionary that the word 'within' is given as a synonym of the word 'in', and we think that, as applied

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to location as being on the inside or outside of an inclosure, they are synonymous, the context or form of expression determining which should be used."

A problem of statutory interpretation, quite similar to the phrase "in a third class city," arose in Town of Alexandria v. Clark County, 231 SW2d 622. A statute in that case allowed the mayor and members of the city council of any city or town "within any special road district" to help appoint the board of commissioners of the district. The Town of Alexandria was about 90 per cent within a road district and about 10 per cent without. The court, in holding that the statute did not apply to Alexandria, said on page 624:

"It is true that the statute does not say 'wholly within' which is not synonymous with 'partly' which refers to a situation where a part of a territory is without the district. \* \* \* But, neither does the statute employ the phrase 'partly within' or 'substantially within' which would be interpolated into the statute if the appellant's interpretation of the statute prevailed. Had the legislature intended that interpretation it could have provided for it; \* \* \*"

To further support the proposition that Section 165.315 does not apply to a school district which is only partly within a third class city, it should be noted that the statute has provisions for nomination by a majority of the members-elect of each political party committee "of the city", or by a petition signed by a specified number of qualified voters "in the city." There is no mention of the procedure to be followed by those who do not live in the city, but live in the school district.

If Sections 165.315 and 165.467 do not apply to School District No. 30, of Independence, Missouri, then the school districts' elections are to be controlled by Section 165.330, RSMo 1949. This statute 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. The board shall appoint three judges of election for each voting place, and said judges shall appoint two clerks; said judges and clerks shall be sworn and the election otherwise conducted in the same manner as the elections for state and county officers and the result thereof certified by the judges and clerks to the secretary of the board of education, who shall record the same, and, by order of said board, shall issue certificates of election to the persons entitled thereto; and the results of all other propositions submitted must be reported to the secretary of the board, and by him duly entered upon the district records.

"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; 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. Should such school district embrace territory not included in the limits of such city or town, the qualified voters thereof may vote at such voting precinct as they would be attached to, provided the ward lines thereof were extended and produced through such adjoining territory; provided, that in any year in which a county superintendent of public schools is to be elected that the qualified voters of such town, city or consolidated district where registration of voters is required, must vote in the ward or precinct of which they are residents, if the place of voting has been so designated by the board of education; provided, that if

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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.

"4. All school districts in cities, towns and villages in this state which are now or which may hereafter be under special charter shall hereafter hold their annual school elections on the first Tuesday in April, and the members of the boards of education now serving in such districts shall continue to serve until the first Tuesday in April next following the expiration of the terms for which they were elected or appointed, and until their successors are elected and qualified."

Section 165.330, can only be fully understood to cover the problem at hand when read in conjunction with Sections 111.255, 121.010, 121.050, 121.250 and 121.260, RSMo, Cum. Supp. 1957. These statutes are listed to show how they modify Section 165.-330, RSMo 1949.

Section 111.255:

"Notwithstanding any other provisions of law, whenever any primary, general or special elections, or elections held by any school district, fire protection district, sewer district, municipalities, or other political subdivision of the state, are held upon the same day in any political subdivision, one polling place for the several elections in each precinct, consolidated precinct or district in the political subdivision shall whenever feasible be designated by the county clerk, board of election commissioners, or other proper election official, having authority over general elections in the political subdivision and the election officials in the polling places shall be designated by the county clerk, board of election commissioners or other proper election official and

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shall be compensated for one election only.

"Any person failing or refusing to comply with the provisions of this section is guilty of a misdemeanor."

Section 121.010:

"Any election authority may, subject to the provisions of section 121.020, adopt voting machines for use in any or all precincts in which registration is required within its territorial jurisdiction. The voting machines may be used at any or all elections held in such precincts for voting, registering and counting the votes cast."

Section 121.050:

"All costs in connection with voting machines, other than for purchase price or rental charge, shall be apportioned and paid in the same manner as other election expenses are apportioned and paid."

Section 121.250:

"All of the election laws now in force, and not inconsistent with the provisions of this chapter, shall apply with full force and effect to elections in cities and counties using voting machines. Nothing in this chapter shall be construed as prohibiting the use of a separate ballot for constitutional amendments and other public measures."

Section 121.260:

"1. The provisions of all state laws relating to elections and of any city charter or ordinance not inconsistent with this chapter shall apply to all elections in districts or precincts where voting machines are used.

"2. Any provision of law, or of any city charter, or ordinance, which conflicts with the use of voting machines set forth in this chapter, shall not apply to the districts, wards, or precincts in which voting machines

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are used. All acts, or parts of acts, or city charters, or ordinances, in conflict with any of the provisions of this chapter, are of no force or effect in election districts, wards or precincts where voting machines are used. (Emphasis added.)

When these statutes are read as a unit it should appear that regardless of the fact that Sections 165.315 and 165.467 had no application to the election held on April 5, 1960, this election was held under valid statutory authorization and was conducted in a sanctioned method. There remains, however, the original question concerning the division of election expenses between the city and the school district.

There is little, if any, real guidance to be had in this area by attempting to harmonize those statutory provisions providing for the allocation of election expenses in Jackson County, St. Louis County, Kansas City and St. Louis. Each statute is designed to take care of a specific problem at a specific geographical location and are not subject to generalization. The Legislature's intention, concerning the problem of dividing election expenses between school districts and cities or counties, might be revealed by observing Section 165.465, RSMo Cum. Supp. 1957. This section relates to school districts with larger populations than No. 30, in Independence, but expresses the view that the school district pays only the additional cost of the election. Section 165.465 reads as follows:

"In any school district having a population of more than two hundred thousand and less than seven hundred thousand, the boards of election commissioners of the city or county or both in which the district is located shall conduct any or all school elections held in the district. When any such school election is held it shall be conducted in all respects in accordance with the laws relating to election of state, county or city officers and to the applicable law relating to the submission of bond issues within the jurisdiction of the board of election commissioners which conducts the election. The cost of the election, if only school issues are submitted, shall be paid by the school district; but when the school election is held at the same time and place as elections for city or county officers, only the additional cost incurred in connection with the printing

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required by the school election shall be paid  
by the school district." (Emphasis added.)

To support the theory that the above statute is a reflection of the Legislature's intent when it provides for voting machines to be used for a joint city and school district election, it is to be noted that the original election provisions which were applicable to our situation provided for separate ballots, ballot boxes, poll books, and voters certificates. This additional election equipment was necessary for the school board election and was to be paid for by the school board. It should be emphasized that the school board paid only for the additional supplies and equipment and did not pay for any expenses normally associated with the election. Thus, it is submitted that the school board is only responsible for those expenses which are over and above the normal election expenses paid by the city when a city and school board election are jointly held. This additional cost might very well be limited to that expense of printing sample ballots and placing the candidates' names and the propositions to be voted upon in the different voting machines.

#### CONCLUSION

Whenever a school district, located primarily but not wholly, within a third class city holds its annual election in conjunction with the city's annual election, the school board shall be responsible for those election expenses which are in addition to the election expenses normally expended by the city for an election.

Yours very truly,

JOHN M. DALTON  
Attorney General

EGB/ar/mlw