

VOTING MACHINES:
BOARD OF ELECTION COMMISSIONERS:
ELECTIONS:

Rental charges for additional voting machines for use in St. Louis County are not required to be paid solely out of bond issue funds.

OPINION No. 343

September 26, 1962

Honorable Carroll J. Donohue, Chairman
Board of Election Commissioners
St. Louis County
Clayton 5, Missouri



Dear Mr. Donohue:

You have requested the opinion of this office as follows:

"With respect to the conduct of the General Election in November of 1962, the Board of Election Commissioners of St. Louis County does not have sufficient voting machines to enable the Board to conduct its election. The Board does have an opportunity to rent machines for the purpose of the conduct of said election and is desirous of knowing whether St. Louis County and the Board of Election Commissioners have the right to rent or lease voting machines for the conduct of a General Election with the rental or lease payments to be made from the general revenue of St. Louis County or at least from revenue sources other than the proceeds of a bond issue. It is contemplated that voting machines would be rented solely for the purpose of the conduct of the November election and that a fair rental, approved by the Board of Election Commissioners and by other appropriate officials, would be paid therefor.

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"This request is made because there is a varying opinion among interested parties and among various attorneys who have deliberated on this subject as to whether such rental may be paid only out of bond issue funds or whether same could be paid out of the County's general revenue or from other funds available to St. Louis County or the Board of Election Commissioners."

The question, thus, is, whether rental payments for voting machines to be used in St. Louis County in the November, 1962, election must be paid only out of bond issue funds.

Chapter 121, RSMo, authorizes the adoption of voting machines in any or all precincts in which registration is required. Section 121.010, RSMo, grants the power to adopt such machines to the "election authority." In St. Louis County, the Board of Election Commissioners is the "election authority." Section 113.050 et seq., RSMo.

Section 121.020, RSMo, makes it a prerequisite to the adoption of voting machines by the election authority that the governing body (in St. Louis County, the county council) must provide "within limitations imposed by law" for the payment of the purchase price or rental charge, or both, "as may be proposed by the election authority" and, with certain exceptions not here material, that the qualified voters of the county approve any proposed adoption of voting machines. A two-thirds majority affirmative vote is required for the approval of the proposed adoption and purchase of such machines, while a simple majority affirmative vote is sufficient for the approval of any proposed adoption and rental of voting machines. This section then expressly provides:

"An affirmative vote of the requisite majority upon any proposition to incur indebtedness to purchase or rent voting machines shall be deemed to satisfy the requirement for approval by the voters of the adoption and acquisition of

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voting machines."

In State ex rel Cole v. Mathews, Mo., 274 S.W. 2d 286, 288, the following facts appear:

"On February 9, 1954, pursuant to a special election held under the provisions of § 121.020, the qualified voters of St. Louis County, by a vote of more than two-thirds majority, approved the acquisition and use of voting machines and authorized the issuance of the county's bonds in the amount of \$650,000 for the purchase thereof."

Hence, by their 1954 vote, the requisite majority of the qualified voters of St. Louis County voted in favor of the policy of using voting machines in elections in said county. The voters have thereby authorized the Board of Election Commissioners to adopt voting machines in any or all precincts of St. Louis County. Whether such machines shall be used in all precincts or merely in some is for the Board to determine in the exercise of its discretion. It appears from your letter that the Board is now desirous of adopting voting machines for use in all precincts within its jurisdiction at the next general election, although the number of machines presently available is insufficient for said purpose.

In State ex rel Cole v. Mathews, supra, the question was whether the county council could interfere with the good faith discretion of the Board of Election Commissioners in determining the type or number of voting machines to be used in the county. Inter alia, the court construed Section 121.020, RSMo, and in particular that portion thereof which makes it one of the prerequisites to the adoption of voting machines in St. Louis County that the county council "must provide, within limitations imposed by law for the payment of the purchase price or rental charge, or both such rental charge and purchase price, as may be proposed by the election authority."

In that case, as the court pointed out, the voters authorized the adoption of the voting machines "and provided the funds therefor." Hence, the county council was held charged with only a ministerial duty of paying for the type and number of voting machines adopted by the Board of Election Commissioners out of the funds provided by the voters.

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The case did not have for consideration the question of whether the voters must specifically provide funds for the acquisition of voting machines, and we find no language therein which would warrant the conclusion that in all instances funds must be affirmatively provided by the electorate.

Section 121.020, RSMo, makes it a prerequisite to the adoption of the machines that the county council must provide "within limitations imposed by law" for the payment of rental charges and purchase price of voting machines "as may be proposed by the election authority." Hence, it is clear that it is for the county council to provide the funds "within limitations imposed by law."

Essentially, your question is whether one of the "limitations imposed by law" is that the funds be derived from a bond issue voted by the requisite majority of the voters. No such limitation is spelled out in the statute. In our opinion, so long as the necessary funds are available and not otherwise encumbered, such funds may be used to pay rental charges for the voting machines, the use of which has theretofore been approved by the voters. There is no requirement whatever in Section 121.020, RSMo, that either the purchase price or rental charges be paid only out of bond issue funds.

The provision that the vote of a requisite majority upon a proposition to incur indebtedness shall be deemed to satisfy the requirement of approval by the voters of the adoption and acquisition of voting machines, was obviously intended to avoid the necessity of requiring the voters to vote upon a separate proposition for the adoption and acquisition of the machines. It is self-evident that if the voters approve an indebtedness for the purpose of acquiring machines they thereby vote in favor of the policy that such machines be adopted and acquired for use in the county. It is equally true that the voters may approve the adoption and acquisition of voting machines without providing funds by bond issue.

In this connection we note that under the provisions of our Constitution an affirmative two-thirds majority of the voters is necessary before a county may incur an indebtedness in any year in excess of the income and revenue provided for such year, plus any unencumbered balances for previous years. Article VI, Sections 26a, 26b and 26c. Hence, a simple majority vote could not, in any event, provide

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any bond issue funds for the rental of voting machines.

It is evident therefore that although the necessary funds must be provided before voting machines may be acquired either by purchase or rental, it is not at all essential that such funds be bond issue funds. So long as the amount expended is "within limitations imposed by law," rental payments may be paid out of the county general revenue or from other funds, not otherwise encumbered, available to St. Louis County or the Board of Election Commissioners. There is no other restriction.

CONCLUSION

It is the opinion of this office that rental charges for additional voting machines necessary to enable the Board of Election Commissioners of St. Louis County to effectuate its desire to use such machines in all precincts of the county at the November, 1962, general election are not required to be paid solely out of bond issue funds.

The foregoing opinion, which I hereby approve, was prepared by my assistant Joseph Nessenfeld.

Very truly yours,

THOMAS F. EAGLETON
Attorney General

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