

SCHOOLS: In a school annexation election re-  
SCHOOL ELECTIONS: sulting in a tie vote a second elec-  
SCHOOL ANNEXATION ELECTIONS: tion is not permitted for two years  
TIE VOTE: under Section 165.300 RSMo. Supp. 1963.

Because Section 165.300 is repealed, effective July 1, 1965, and replaced by 162.441 RSMo. Supp. 1963 Appendix, another election is permitted after July 1, 1965, because a majority of votes cast at the former election was not against annexation.

OPINION NO. 150

May 27, 1965

Honorable Bernard "Doc" Simcoe  
State Representative  
Callaway County  
Capitol Building - Room 306B  
Jefferson City, Missouri



Dear Representative Simcoe:

This opinion is issued in response to your request for an official ruling on the following:

"There is in my county a common or three-director school district which recently held an election on the proposition of annexation. This election was held under the provisions of 165.300, Missouri School Laws, 1960. The result of this election was a tie.

"We would like to know when another election upon this proposition can be held in this district, and is the district bound by Section 165.300 under which they have voted for a period of two years, or would Section 162.441 apply to them after July 1."

Section 165.300 RSMo. Supp. 1963, provides that after the holding of an annexation election, no other such election shall be called within a period of two years. This prohibition applies whether the first annexation election was defeated, passed or ended in a tie. Thus, so long as Section 165.300 is effective, a second annexation election cannot be called in the district to which you refer.

However, in enacting the new school code (Senate Bill No. 3, 72nd General Assembly), the legislature repealed Section 165.300. This repeal will take effect July 1, 1965. Therefore, after that date Section 165.300 will no longer be the law and will not prevent a second annexation election.

Honorable Bernard "Doc" Simcoe

The new school code also provides for annexation elections. See Section 162.441, RSMo. Supp. 1963 Appendix. The new annexation statute (effective July 1, 1965) provides in subsection (5):

"If a majority of the votes cast are against annexation, no other election on the proposal shall be called within two years after the election."

The new statute has materially changed the wording from the former annexation statute. Under the old statute subsequent elections were prohibited for two years regardless of the outcome of the first annexation election. Obviously from the provisions of the new statute the legislature intended to limit the two-year prohibition.

This manifest intent to limit the two-year prohibition leads us to the conclusion that the two-year prohibition applies only to the single instance expressed by the statute, namely, when "a majority of the votes cast are against annexation." When an election results in a tie, there is no majority against.

Furthermore, the two-year prohibition is in derogation of the people's right to hold elections and govern their affairs by democratic process. Thus, the prohibition should be strictly construed.

Therefore, we are of the opinion that the two-year prohibition of Section 162.441 does not apply where the first election results in either a majority in favor or in a tie.

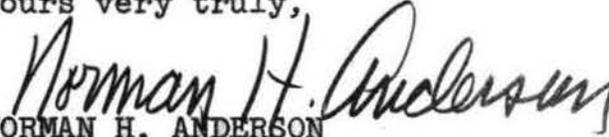
In short, after July 1, 1965, a second annexation election may be held in the school district referred to in your letter.

#### CONCLUSION

In a school annexation election resulting in a tie vote a second election is not permitted for two years under Section 165.300 RSMo. Supp. 1963.

Because Section 165.300 is repealed, effective July 1, 1965, and replaced by 162.441 RSMo. Supp. 1963 Appendix, another election is permitted after July 1, 1965, because a majority of votes cast at the former election was not against annexation.

Yours very truly,

  
NORMAN H. ANDERSON  
Attorney General