

SCHOOLS: A school annexation election under Section 162.441
ANNEXATION: RSMo Supp. 1965, may be held within less than two
ELECTIONS: years of a prior annexation election where the subse-
quent election involves a different proposal.

OPINION NO. 228

December 9, 1966

Honorable Alden S. Lance
Prosecuting Attorney
415 West Main Street
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Dear Mr. Lance:

This official opinion is rendered in response to a request for a ruling. Your letter contains four separate questions for our consideration.

It is our understanding that your first question has been answered by our previous telephone conversations, therefore it shall not be considered herein. Your third and fourth questions involve separate subjects and we believe them to require treatment in opinions dealing solely with each question. Thus, we shall consider your third and fourth question as separate opinion requests and issue a separate ruling upon each. This opinion will rule solely upon your second question.

Your second question requests an interpretation of Section 162.441(5), RSMo Supp. 1965, under the following factual situation: A valid petition for annexation of school districts was received. A special election was held and the annexation defeated. Subsequently, another petition was received proposing annexation to a district different from that proposed in the earlier petition.

Your question is: May a special election be called on the second annexation proposal within less than two years after the election on the first proposal?

The procedure for annexation of school districts was formerly set forth by Section 165.300, RSMo. This section contained the following proviso:

" . . . that after the holding of any such election, no other such special election shall be called within a period of two years thereafter. . . ."

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This provision was construed by this office to mean that after a district had submitted an annexation at a special election that a subsequent annexation proposal, even though it involved annexation to a different district than the first, could not be submitted at a special election until two years after the date of the first election. Opinion No. 24, Downs, 8-2-54. For reasons stated hereafter, Opinion No. 24 is hereby withdrawn.

The ruling of this office in Opinion No. 24, supra, was supported by decision of the Missouri Supreme Court in State ex inf Rice v. Hawk, Mo., 228 S.W.2d 785. The appellants in that case contended that the two-year waiting period did not apply where the second annexation proposal involved annexation to a different district than that submitted in the first proposal. The Court rejected this contention and held that when a special election had been held under the statute, no other special election, even though involving a different proposal, could be held within a period of two years thereafter.

The annexation statute was amended by the new school code. Laws 1963, p. 227. Subsection 5, of the presently effective annexation statute, Section 162.441, RSMo Supp. 1965, provides as follows:

"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." [Emphasis added]

The words of the present statute are different from the prior statute. It is presumed that the legislature in changing the words had the intention to change the law. The legislature is also presumed to have had knowledge of judicial constructions of the prior statute. The conspicuous change by the legislature is the addition of the words "on the proposal" after the word "election" in the statute. We also note that the legislature used the definite article "the" and not the indefinite article "a".

The addition of the phrase "on the proposal" after the word "election" manifests legislative intent that the two-year waiting period should not apply after every annexation election, but only to subsequent elections on the same annexation proposal. Accordingly, a subsequent annexation election on a different proposal would not be restricted by the two-year waiting period. Legislative notice of the facts and rulings of the Hawk case, supra, fortify this interpretation.

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CONCLUSION

Therefore, it is the opinion of this office that a school annexation election under Section 162.441 RSMo Supp. 1965, may be held within less than two years of a prior annexation election where the subsequent election involves a different proposal.

The foregoing opinion, which I hereby approve was prepared by my assistant Louis C. DeFeo, Jr.

Yours very truly,


NORMAN H. ANDERSON
Attorney General