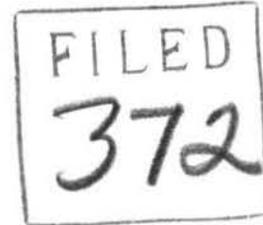


COUNTY CLERKS: The following local option laws within the  
LOCAL OPTION LAWS: meaning of Section 51.135, RSMo Cum. Supp. 1965  
should be reported by the County Clerk to the  
Revisor of Statutes: (1) Planning and Zoning,  
Class two and three counties, Sections 64.510-64.690, RSMo as amended  
(2) Township Organization, Sections 65.010-65.050, RSMo (3) Counties  
may join in performance of common functions or services, including  
purchase, construction and maintenance of hospitals, almshouse, etc.,  
on vote of people, Sections 70.010-70.090, RSMo (4) Local Option  
County Registration, Chapter 114, RSMo as amended (5) Election to  
abolish or retain office of county superintendent of schools, Sections  
179.210 - 179.220, RSMo Cum. Supp. 1965 (6) County Health Centers,  
Section 205.010, et seq, RSMo as amended (7) Eradication and control  
of Johnson Grass, Sections 263.255-263.267, RSMo (8) Animals restrained  
from running at large, Chapter 270, RSMo (9) Fences and Enclosures,  
Sections 272.210-272.370, RSMo Cum. Supp. 1965 (10) Local Option Dog  
Tax, Sections 273.040 - 273.180, RSMo.

September 15, 1966



Honorable Clarence P. Lehen  
Prosecuting Attorney  
Montgomery County Courthouse  
Montgomery City, Missouri

OPINION NO. 372

Dear Mr. Lehen:

This is in response to your request for an official opinion of  
this office which you stated as follows:

"An opinion is hereby requested concerning matters  
contained in Chapter 51, Laws of the State of Mis-  
souri, in Section 51.135, as follows:

\* \* \* \* \*

" \* \* \* a list of all laws considered 'local option  
laws' is requested."

Section 51.135, RSMo Cum. Supp. 1965, reads as follows:

"1. In addition to his other duties provided by  
law, the clerk of each county court in this state  
shall provide the revisor of statutes with a com-  
plete list setting forth each Missouri statute,  
commonly known as a local option law, which is in  
effect in his county by reason of its provisions  
having been adopted by a vote of the people of  
that county."

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"2. The original list shall be mailed by certified mail to the revisor of statutes before July 1, 1966, and thereafter the clerk of the county court of each county shall promptly notify the revisor by certified mail upon adoption by a vote of the people of his county of the provisions of any such statute."

The words "local option" imply the grant of the right to one locality to adopt and to another to decline to avail itself of a law. Ex parte Handler, 176 Mo. 383, 75 S.W. 920.

A class of laws which is known in common parlance as "local option laws" may relate to such subjects as intoxicating liquor or the running of cattle at large and may be differently regarded in different localities. They are within the class of police regulations in respect to which it is proper that the local judgment control. In re O'Brien, 29 Mont. 530, 75 P. 196, 1 Ann. Cas. 373.

Laws of a general nature which by the General Assembly may be thought desirable by the inhabitants of certain localities within the state but undesirable by inhabitants of other localities, sometimes known as "local option laws", depend for their execution and enforcement on the votes of some portion of the people. Holcombe v. Georgia Milk Producers Confederation, 188 Ga. 358, 3 S.E. 2nd 705. Similarly, a local option law is considered a law to take effect or not to take effect in a given locality upon the consent or dissent of the voters of that locality, or upon other contingencies, while it may have effect in other localities. State v. Brown, 19 Fla. 563.

Am. Jur. defines local option laws as follows:

"There are in the cases examples of statutes which by their terms are in force only in such localities as may adopt the statute. A law of this kind, which by its terms may be made applicable to any county or subdivision thereof or any precinct therein by a vote taken at an election ordered for the purpose, is in the nature of a floating enactment until it is made applicable to a particular locality in the mode prescribed. \* \* \*" 50 Am. Jur., Statutes, § 11.

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The term "local" with reference to a law or class of laws should be construed to mean that which operates only within a limited territory or specified locality. An act operating upon persons or property in a single city or county, or any two or three counties would be local. People v. Newburgh and S. Plank Road Company, 86 N. Y. 1.

While normally used and defined in a contract consideration, "option" has been defined as the privilege or right of election to exercise a privilege. Suhre v. Busch, Mo., 120 S.W. 2d 47. Further, "option" has been defined as the power of choosing; right of election; alternative. It is the right of choice between two things, courses or propositions. It is loosely spoken of as the right of choice between several things or courses. Malone v. Meres, Fla 109 So. 677. In the context under consideration, therefore, the term "option" can be thought of as the right of the voters of a locality to avail or not to avail themselves of a law.

The word "locality" signifies a particular district; confined to a limited region; opposed to "general"; limited by boundaries, large or small -- as a country, a state, a county, a town or a portion thereof. Pierce v. Dillingham, 96 Ill. App. 300.

We then want to ascertain the meaning of Section 51.135, RSMo Cum. Supp 1965:

"\* \* \*the clerk \*\* shall provide \*\* a complete list setting forth each Missouri statute, commonly known as a local option law, which is in effect in his county by reason of its provisions having been adopted by a vote of the people of that county."

In applying the foregoing principles to the language used in this statute it appears certain that it applies to those local option laws which are adopted by the people of an entire county and not to an area comprising merely part of a county. Also it applies to those laws that are enforceable by county authorities and not to the formation of legal entities containing either part or all of a county.

In light of these principles, the following Missouri statutes which take effect upon a vote of the people of the County in which they are enacted are considered local option laws within the meaning of Section 51.135, RSMo. Cum. Supp. 1965:

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1. Planning and Zoning - Class two and three counties, Sections 64.510 - 64.690, RSMo as amended.
2. Township Organization, Chapter 65 RSMo 1959.
3. Counties May join in performance of common functions or services including purchase, construction and maintenance of hospitals, almshouses, etc., on vote of people, Sections 70.010-70.090, RSMo 1959.
4. Local Option County Registration, Chapter 114, RSMo as amended.
5. Election to abolish or retain office of county superintendent of schools, Sections 179.210 - 179.220, RSMo Cum. Supp. 1965.
6. County Health Centers, Section 205.010, et seq, RSMo as amended.
7. Eradication and Control of Johnson Grass, Sections 263.255 - 263.267, RSMo 1959.
8. Animals restrained from running at large, Chapter 270, RSMo 1959.
9. Fences and Enclosures, Sections 272.210 - 272.370, RSMo Cum. Supp. 1965.
10. Local Option Dog Tax, Sections 273.040-273.180, RSMo, 1959.

While there are a number of statutes in Missouri which have some of the attributes of local option laws we think they do not properly fall within the statutory definition of Section 51.135, RSMo Cum. Supp. 1965. For example Constitutional Charter Counties of First Class may organize and create special school districts for handicapped children, Section 178.640 - 178.765, RSMo Cum. Supp. 1965; County Library Districts, Section 182.010, RSMo 1959, Hospital District Law, 206.010 et seq, RSMo Cum. Supp. 1965, Soil Conservation Districts, Section 278.060-278.150, RSMo Cum. Supp. 1965, Sale of Liquor by Drink in Incorporated Areas, Section 311.110-311.170, RSMo 1959, Fire Protection Districts, Chapter 321, RSMo Cum. Supp. 1965.

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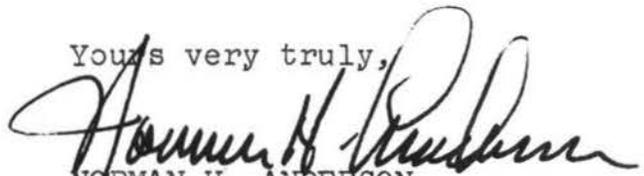
CONCLUSION

It is the opinion of this office that the following local option laws within the meaning of Section 51.135, RSMo Cum. Supp. 1965, should be reported by the County Clerk to the Revisor of Statutes:

1. Planning and Zoning Class two and three counties, Sections 64.510-64.690, RSMo as amended.
2. Township Organization, Sections 65.010-65.050, RSMo.
3. Counties may join in performance of common functions or services, including purchase, construction and maintenance of hospitals, almshouse, etc., on vote of people, Sections 70.010-70.090, RSMo.
4. Local Option County Registration, Chapter 114, RSMo as amended.
5. Election to abolish or retain office of county superintendent of schools, Sections 179.210 - 179.220, RSMo. Cum. Supp. 1965.
6. County Health Centers, Section 205.010, et seq, RSMo as amended.
7. Eradication and Control of Johnson Grass, Sections 263.255-263.267, RSMo.
8. Animals restrained from running at large, Chapter 270, RSMo.
9. Fences and enclosures, Sections 272.210-272.370, RSMo Cum. Supp. 1965.
10. Local Option Dog Tax, Sections 273.040-273.180, RSMo.

The foregoing opinion which I hereby approve was prepared by my Assistant J. Gordon Siddens.

Yours very truly,

  
NORMAN H. ANDERSON  
Attorney General