

November 18, 1970

OPINION LETTER NO. 541

Answered by Letter - Klaffenbach

Honorable Robert S. Drake, Jr.  
Prosecuting Attorney  
Benton County Court House  
Warsaw, Missouri 65355



Dear Mr. Drake:

This letter is in answer to your opinion request in which you ask the following:

"We have in this county a nursing home established under Chapter 198 R.S.Mo, which is not operating a nursing home and in which the voters of the district have on three separate occasions refused to approve a bond issue for the construction of a nursing home. Under section 198.360 R.S.Mo. as amended 1969 the board of that district must submit to the voters a proposition on the dissolution of that district but the statute fails to give the required notice for the election and form of the ballot and the question is whether or not the procedure provided in R.S.Mo. sections 198.250 through 198.270 would apply, with changes in the ballot and if not what procedure should be followed?"

Section 198.360, RSMo, 1969 states:

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"In any nursing home district created under the provisions of chapter 198, RSMo 1967 Supp. which is not operating a nursing home, and in which the voters of said district have on three separate occasions refused to approve a bond issue for the construction of a nursing home, the board of said district shall submit to the voters the proposition of the dissolution of the district. If a majority of the voters approve the dissolution, said district shall be dissolved and any tax money in the treasury shall be rebated to the original taxpayer on a pro rata basis."

Section 198.250, RSMo 1969, applicable to an election to determine whether a district shall be organized states:

"Notice of the election shall be given by publication on three separate days in one or more newspapers having general circulation within the territory, the first of which publications shall be not less than thirty days prior to the date of the election, and by posting notices in ten of the most public places in the territory, and in case no newspaper has a general circulation in the territory, the notices shall be so posted if fifteen of the most public places therein, not less than thirty days prior to the date of the election. Each notice shall state briefly the purpose of the election, setting forth the proposition to be voted upon, form of ballot to be used at the election, a description of the territory, set forth the election precincts, and designate the polling places therefor. The notice shall further state that any district upon its establishment shall have the powers, objects and purposes provided by sections 198.200 to 198.350, and shall have the power to levy a property tax not to exceed fifteen cents on the one hundred dollars valuation."

Section 198.260, RSMo 1969, provides the form of the ballot at such election.

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Although, as you indicated in your letter the legislature did not provide the form of the notice for dissolution or the form of the ballot for dissolution or the procedures to be followed, it is our view that insofar as applicable the procedures outlined in Section 198.250 should be followed for dissolution of the district. While we are not saying that another form of notice would not be sufficient, we do believe that the form of notice provided by the legislature for the organization of the district would be the proper form also to be used for the dissolution of the district.

We notice with respect to the dissolution provisions of Section 198.360 that the "board of said district" is required to submit the issue to the voters, and therefore, Section 198.270 which charges the county court with election duties is not applicable, that is to say on dissolution the board of directors conducts the election, although, it would appear appropriate and advisable, if dissolution is voted, that such results as declared by the board be shown on the records of the county court in the same manner as was the order showing the proposition to organize under Section 198.270.

With respect to the form of the ballot, the general rule of course, is that the ballot must sufficiently inform the voters so that they can intelligently express themselves and mark their ballot accordingly whether they are for or against the issue. 29 C.J.S. Elections §173(2) et. seq. In our view the proposition can be stated quite simply by, in the ballot, asking the voters whether the described nursing home should be dissolved.

It is also our view that the box, "yes" and "no" proposition as set out in the ballot form of Section 198.260 should be used for the dissolution proposition.

Very truly yours,

JOHN C. DANFORTH  
Attorney General