

ELECTIONS: In cities and counties governed
PRECINCTS: by Sections 114.011-114.146, RSMo
HOSPITAL DISTRICTS: Supp. 1973: 1. The boards of nurs-
NURSING HOME DISTRICTS: ing home districts and the boards
of hospital districts may not des-
ignate voting precincts. The precincts for elections of those po-
litical subdivisions are those established by the governing bodies
of cities or by county courts pursuant to Section 114.116, RSMo
Supp. 1973. The boards of nursing home districts and hospital dis-
tricts may not consolidate such precincts. 2. When a political sub-
division other than a county holds an election, absentee ballots
are to be furnished to voters by the political subdivision.

OPINION NO. 117

March 13, 1974



Honorable James C. Kirkpatrick
Secretary of State
Room 209, Capitol Building
Jefferson City, Missouri 65101

Dear Mr. Kirkpatrick:

This official opinion is issued in response to your request for a ruling on the following questions relating to the effect of SSHCSHB No. 20, 77th General Assembly (Sections 114.011-114.146, RSMo Supp. 1973), on the election laws of Missouri.

We will confine our discussion to those counties and cities where elections are governed by Sections 114.011-114.146: that is, counties and cities which do not have boards of election commissioners.

Your first question is as follows:

"Can the boards of nursing home districts and the boards of hospital districts designate precincts (see Section 198.250 and Section 206.060, RSMo 1969) without consideration to the precincts established by the governing body of a city and county court? Can such boards consolidate precincts created under Sections 114.011-114.146?"

Section 198.250, RSMo 1969, provides as follows for nursing home district elections:

"Notice of the election shall be given by publication on three separate days in one or more

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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 in 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." (Emphasis added).

The wording of Section 206.060, RSMo 1969, pertaining to hospital district elections, is virtually identical to that of Section 198.250.

However, Section 114.116, RSMo Supp. 1973, provides as follows:

"1. Election districts or precincts for that part of the county outside the corporate limits of any city, town or village, which for municipal election purposes is subject to the provisions of sections 114.011 to 114.146 shall be set by the county court. The election precincts for that part of the county within any city, town or village, which for municipal election purposes is subject to the provisions of sections 114.011 to 114.146 shall be set by the governing body of the city, town or village or by the municipal election authority, whichever the case may be.

"2. No election precinct established in any city, town or village, which for municipal election purposes is subject to the provisions of sections 114.011 to 114.146, shall

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encompass territory outside the corporate limits of the city, town or village, nor shall such precinct encompass territory in more than one county."

Your question asks, in effect, whether Section 114.116 has repealed the authority formerly granted to the boards of nursing home districts and hospital districts to "set . . . the election precincts" for elections in those political subdivisions. We hold that it has done so.

It is true that the implied repeal of a statute by a later-enacted statute, which does not explicitly repeal the earlier one, is not favored in the law. Nor is the repeal of a specific statute, such as Section 198.250 or Section 206.060, by a general one, such as Sections 114.011-114.146, favored, when it is possible to reconcile and harmonize the conflicting statutes by construction. The rule governing implied repeal has been held to require that ". . . the two statutes are so repugnant that both cannot stand, and therefore the Legislature necessarily intended repeal, even though they did not expressly so provide. . . ." Kansas City Terminal Railway Company v. Industrial Commission, 396 S.W.2d 678, 683 (Mo. 1965). But in this instance we believe that in fact such a stringent test can be met.

". . . the law favors constructions which harmonize with reason, and which tend to avoid unjust, absurd, unreasonable or confiscatory results, or oppression" State ex rel. Stern Brothers & Co. v. Stilley, 337 S.W.2d 934, 939 (Mo. 1960).

Section 114.116, of course, was enacted as part of a comprehensive election reform act, SSHCSHB No. 20, 77th General Assembly. The first section of that act, now Section 114.011, RSMo Supp. 1973, provides as follows:

"The provisions of sections 114.011 to 114.146 shall apply in all elections except those in cities and counties having a board of election commissioners. It is the intent of sections 114.011 to 114.146 that the election officials of each county, in connection with the registration of voters and in order to promote and encourage voter registrations, shall establish a sufficient number of registration places throughout the county and at such days and hours for the convenience of persons desiring to register, to the end that registration may be maintained at a high level."
(Emphasis added).

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Furthermore, Section 114.016, RSMo Supp. 1973 (also a part of SSHCSHB No. 20), provides as follows:

"1. No person shall be permitted to vote in any election unless he is duly registered and unless his name thereby appears in both the county record and the precinct record for the county and precinct in which he resides.

"2. The registration of voters shall be held as provided in sections 114.016 to 114.146. After registering, a voter is not required to register again, except as provided in this act. The registration of voters may be changed, canceled or transferred only as provided in sections 114.016 to 114.146."

In our Opinion No. 116, 1974, issued to the Honorable James C. Kirkpatrick, copy of which is attached hereto, we pointed out that the comprehensive system of registration and voting established for "all elections" (except in certain cities and counties) by Sections 114.011-114.146 "is based upon registration by precincts." We specifically noted Section 114.091, which establishes the procedure for voting under the new registration law.

The legislature clearly intended this procedure for voting to apply in nursing home district and hospital district elections. Sections 114.011, 114.016. The power to designate precincts under Sections 114.011-114.146 is limited by Section 114.116 to county courts and the governing bodies of cities, towns and villages, or municipal election authorities.

Therefore, we conclude that, insofar as Sections 198.250 and 206.060 give the boards of nursing home districts and hospital districts the power to establish precincts for their elections, they are repugnant to Sections 114.011-114.146; and the legislature must necessarily have intended to repeal them in that respect by enacting the latter statutes. The precincts for voting in nursing home district elections and hospital district elections will be those established under Section 114.116, or such parts of those precincts as the nursing home districts or hospital districts may occupy.

In our Opinion No. 116, we pointed out that certain political subdivisions were entitled by law to consolidate precincts established under Section 114.116, in order to provide a single polling place to serve more than one precinct, unless such consolidation would interfere with the precinct system of voting in any other political subdivision conducting an election on the same day. However, we do not believe that nursing home districts and hospital

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districts are among the political subdivisions entitled to do so. Their power to "set forth the election precincts, and designate the polling places therefor," as provided in Sections 198.250 and 206.060, cannot be construed to include the power to consolidate precincts, which other statutes (e.g., Sections 95.145 and 162.381, RSMo 1969) authorize in explicit terms.

". . . 'Provisions not found plainly written or necessarily implied from what is written "will not be imparted or interpolated therein in order that the existence of [a] right may be made to appear when otherwise, upon the face of [the statutes], it would not appear." . . . 'We are guided by what the legislature says, and not by what we may think it meant to say.' . . ."
Missouri Public Service Company v. Platte-Clay Electric Cooperative, Inc., 407 S.W.2d 883, 891 (Mo. 1966).

Your second question asks:

"When a political subdivision other than a county holds an election, what officials are responsible for furnishing absentee ballots?"

Your second question requires us to construe and harmonize several provisions of Chapter 112, RSMo 1969, relating to absentee voting, with provisions of SSHCSHB No. 20.

Section 112.020, RSMo 1969, provides as follows:

"Any person who qualifies to vote an absentee ballot, pursuant to the provisions of section 112.010, may apply in person or by mail for an official ballot for the election district or precinct in which he resides. The application shall be made to the election authority within thirty days prior to election day. The application made in person shall be made not later than four p.m. of the day before the election. The application made by mail shall be received not later than four p.m. on the fourth day before the election. If the voter recovers from his illness or physical disability and can go to the proper polling place, or if the voter, having expected to be absent, is in the county of his residence on election day, the absentee

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ballot cast by the voter shall stand as his official vote unless he appears before the election authority prior to nine a.m. on the Friday before the election and destroys the ballot in the presence of a proper official."

The term "the election authority" is defined in Section 112.015, subsection 2, to mean ". . . the county clerk, board of election commissioners or other officer or governmental entity charged with the duty of conducting elections."

Section 112.030 provides as follows:

"1. Application for an absentee ballot may be made on a blank signed by the applicant, to be furnished by the election authority, or may be made in writing by first class mail addressed to the election authority and signed by the applicant. Immediately upon receipt of each application, within the time and in the manner provided, the election authority shall make a list of the names of the absentee voters whose applications for ballots have been received, and shall cause the list to be immediately posted in a conspicuous place accessible to the public at the entrance of the office of the election authority. The list shall show also the post office address, street address, election district or precinct number given by the applicant.

"2. The election authority shall not furnish a ballot to any person who is not lawfully entitled to vote. If the applicant for a ballot is entitled to receive the ballot, the election authority shall send an official ballot in a separate envelope addressed to each absentee voter by certified mail with return receipt or shall deliver in person an official ballot to any applicant applying in person at the office of the election authority.

"3. The official charged by law with printing and supplying ballots under the general election laws of this state shall, at least thirty days before any election at which absentee ballots may be cast, cause to be printed and supplied a sufficient number of ballots to

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be designated as 'official absentee ballots' to be furnished absentee voters." (Emphasis added).

And Section 112.061, subsection 1, provides that:

"1. The election authority shall keep a list for the purpose of entering the name and address, and the election district or precinct of each voter submitting an absentee ballot. As each ballot is received this information shall be entered on the list and a consecutive number assigned to the absentee voter. This number shall be prominently placed upon the mailing envelope beneath the affidavit of each absentee ballot received. The list shall be available for public inspection at all reasonable times."

Section 112.063, subsection 1, provides that:

"1. After nine a.m. on the fourth day before the election, the election authority shall, where voter registration is required, show in the registration records that each voter who submitted an absentee ballot, and who did not destroy the ballot pursuant to the provisions of section 112.020, has voted at the election for which the absentee ballot was submitted and is thereby ineligible to vote at the polls at the election for which the absentee ballot was submitted."

The key term in all these provisions is "the election authority."

Section 114.121 states that:

"The conduct of any election, including the appointment of judges and clerks, canvassing of ballots, choice of polling places and all other acts pertaining to the election, shall be under the direction of the political subdivision conducting the election, except where otherwise provided by law."

We see no reason why the political subdivision conducting the election cannot perform all the functions which Chapter 112

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requires of "the election authority." It is true that Section 114.051, subsection 2, provides:

"The county clerk, before the opening of the polls for any election, shall deliver to the judges of election, appointed under and by virtue of the general laws of election, proper registration records for their respective precinct and shall take a receipt from the judge to whom the records are delivered and keep the receipts on file until the records are returned."

But the political subdivision, which cannot accept any absentee ballots after four p.m. on the day before the election (under Section 112.050), will be able to make appropriate notations in the registration records in compliance with Section 112.063, subsection 1, before the county clerk delivers the registration records to the election judges.

CONCLUSION

Therefore, it is the opinion of this office that, in cities and counties governed by Sections 114.011-114.146, RSMo Supp. 1973:

1. The boards of nursing home districts and the boards of hospital districts may not designate voting precincts. The precincts for elections of those political subdivisions are those established by the governing bodies of cities or by county courts pursuant to Section 114.116, RSMo Supp. 1973. The boards of nursing home districts and hospital districts may not consolidate such precincts.

2. When a political subdivision other than a county holds an election, absentee ballots are to be furnished to voters by the political subdivision.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Mark D. Mittleman.

Yours very truly,



JOHN C. DANFORTH
Attorney General

Enclosure: Op. No. 116
1974, Kirkpatrick