



OFFICES OF THE

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY

JOHN C. DANFORTH
ATTORNEY GENERAL

May 7, 1975

OPINION LETTER NO. 64

Dr. Jack Cross
Commissioner of Higher Education
Department of Higher Education
600 Clark Avenue
Jefferson City, Missouri 65101

Dear Dr. Cross:

This letter is in response to your request for an opinion as to the effect of House Bill 1643, 77th General Assembly, Second Regular Session, which amended Section 182.140, RSMo 1969. You state:

"We are informed that there are certain cities in the State which do not have an annual city election and that they instead have city elections only every two years. We are also informed that there are occasions when a special election is being held in the city for one purpose or another. My question is, if a city does not have an election every year, on what occasion may a library proposition be voted on; and if a city is holding a special election for some other purpose, may a library proposition be voted on at such a special election?"

Section 182.140(1), RSMo, as amended by House Bill 1643 of the 77th General Assembly, now reads:

"Whenever qualified electors equal to five percent of the total vote cast for governor at the last election in any city now or

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hereafter containing more than five thousand and less than six hundred thousand inhabitants petition the mayor, common council or other proper governing body in writing asking that an annual tax be levied for the establishment and maintenance of a free public library in the city, and specify in their petition a rate of taxation of not more than 25 cents for each one hundred dollars of assessed valuation on all the taxable property in the city, the governing body shall direct the proper officer to give notice in his next legal notice of the annual city election.

The officer shall furnish ballots, poll books and other necessary election items, and the expense of the election shall be paid out of the city treasury in the same manner with like effect and by the same officers as in the case of other city elections. The order of the governing body and the notice shall specify the name of the city and the rate of taxation mentioned in the petition, and the officer shall make and file in his office, return of service of the notice. Every voter within the city may vote

'For a tax for each one hundred dollars assessed valuation for a public library', or

'Against a tax for each one hundred dollars assessed valuation for a public library'.

If, from returns of the election, the majority of all the votes cast on the proposition at the election is 'for a tax for each one hundred dollars assessed valuation for a free public library', the governing body shall enter of record a brief recital of returns and that there has been established a public library and thereafter the free public library shall be established, and shall be a body corporate, and known as such." (Emphasis added).

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House Bill 1643 amended Section 182.140 by deleting the words "or special election, which may be called for the purpose of voting on the question" after the words "annual city election".

We have not been able to find any requirements in the statutes for annual city elections. Nor, have we been able to find any definition of "annual city elections". Section 73.430, RSMo 1969, relating to first class cities provides for a general election for the election of its officials on the first Tuesday after the first Monday in April every four years. Section 75.040, RSMo 1969, relating to second class cities, provides for a general election for its officials on the first Tuesday in April in even numbered years. Section 77.040 and Section 79.030, RSMo 1969, relating to third and fourth class cities respectively, provide for a general election for its officials on the first Tuesday of April every two years.

In answering your question, we apply the well accepted maxims of statutory construction. The primary rule is to determine and to give effect to the legislative intent. State ex rel. Lee American Freight System, Inc. v. Public Service Commission, 411 S.W.2d 190 (Mo. 1966). It is presumed that the legislature never intends to enact an absurd law incapable of being enforced. City of Joplin v. Joplin Water Works Company, 386 S.W.2d 369 (Mo. 1965). The law favors the construction of a statute which harmonizes with reason and which tends to avoid absurd or unreasonable results. In re Jackson, 268 F.Supp. 435 (E.D.Mo. 1967); City of Joplin v. Joplin Water Works Company, supra. In construing the statute repealing one statute and substituting another, the court must assume that the General Assembly intended something by the repeal of the old and the enactment of the new in lieu thereof. Darrah v. Foster, 355 S.W.2d 24 (Mo. 1962).

Possibly, Section 182.140, as amended by House Bill 1643, could be construed because of the choice of the words "annual city election" to mean that a proposition to create a city library could not be placed on any ballot and could not be voted on by the people. But, such a construction, in our opinion, would be unreasonable and would be contrary to the legislative intent. It seems clear to this office that by deleting the words "or special election which may be called for the purpose of voting on the question" the legislature only intended to take away the power of a city to hold a special election solely on the issue of creating a city library and establishing the necessary tax rate. Consequently, we are of the opinion that a Missouri court if faced with this issue would construe Section 182.140, as amended by House Bill 1643, to mean the regular election held

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by a city to elect its officials. In the case of second, third and fourth class cities, this would be on the first Tuesday of April every two years. We do not believe that the words "annual city elections" can be construed to include a special election which is being held by the city for some other purpose.¹

Very truly yours,



JOHN C. DANFORTH
Attorney General

¹There is presently pending in the General Assembly Senate Bill 318 which, if passed, would clear up the problem and remove any ambiguity since it specifically designates the elections at which this type of proposition can be considered. We have been advised that Senate Bill 318 has been reported out of committee with an amendment and with a recommendation of "do pass".