

SCHOOLS: Procedure for election and dis-  
COUNTY AND TOWNSHIP FUNDS: tribution of county and town-  
ship school funds.

October 1, 1946

FILED

*copy to  
Mr. Brady*

Honorable F. M. Brady  
Prosecuting Attorney  
Benton County  
Warsaw, Missouri

Dear Mr. Brady:

This is in reply of yours of recent date wherein you request an official opinion from this department on the following statement of facts:

"I would like to have your opinion with reference to sections 10376.1 and 10376.2, concerning 'Annual distribution of capital of liquidated county and township school funds - petition for election', and 'Election on distribution of funds - notice - ballots - distribution of funds.'

"Section 10376.1 provides for the calling of an election to decide whether the capital of the fund is to be distributed annually by the county court, upon petition of 5% of the voters of the county, and section 10376.2, provides for submission of such proposal at a special election to be held for that purpose within sixty days after the filing of the petition therefor.

"I would like to know if this question can be legally submitted at a General Election, such as will be held in this state on November 5th., of this year or if such matter can only be submitted at a special election called for such purpose, upon proper petition being filed, (assuming of course that proper petition is filed with the county court so that proper notice can be given before such General Election as provided in section 10376.2).

"I would also like to know if, when the proposition for annual distribution of

the school fund has been approved by the voters, the county court should proceed to distribute all of the principal of such funds then on hand, including any accumulated interest, and then thereafter distribute whatever accumulates in such funds annually."

By Article 9, Section 7 of the Constitution of 1945, provision is made for the liquidation and reinvestment of county and township school funds. Said Section 7 reads as follows:

"All real estate, loans and investments now belonging to the various county and township school funds, except those invested as hereinafter provided, shall be liquidated without extension of time, and the proceeds thereof and the money on hand now belonging to said school funds of the several counties and the city of St. Louis, shall be reinvested in registered bonds of the United States, or in bonds of the state or in approved bonds of any city or school district thereof, or in bonds or other securities the payment of which are fully guaranteed by the United States, and sacredly preserved as a county school fund. Any county or the city of St. Louis by a majority vote of the qualified electors voting thereon may elect to distribute annually to its schools the proceeds of the liquidated school fund, at the time and in the manner prescribed by law. All interest accruing from investment of the county school fund, the clear proceeds of all penalties, forfeitures and fines collected hereafter for any breach of the penal laws of the State, the net proceeds from the sale of estrays, and all other moneys coming into said funds shall be distributed annually to the schools of the several counties according to law."

It will be noted that this section of the Constitution provides that the counties by majority vote of the qualified electors may elect to distribute the school funds annually in the manner prescribed by law. By virtue of the authority conferred by the aforesaid section of the Constitution, the 63rd General Assembly enacted Senate Bill No. 186 which was

approved on April 26, 1946, and carried an emergency clause which bill, insofar as it relates to the subject of your inquiry, provides as follows:

"Section 1. Whenever there shall be presented to the body having in its charge the capital of the county and township school funds of any county or the City of St. Louis a petition, signed by qualified electors of said county or the City of St. Louis equal in number to five per cent of the voters casting a ballot in said county or the City of St. Louis for the office of governor at the last preceding general election at which said office was voted upon, praying that the proposal be submitted to the qualified electors for making annual distribution of the capital of the liquidated school fund, such body shall cause an election to be held upon said proposal.

"Section 2. Said proposal shall be submitted at a special election to be held for that purpose within sixty days after the filing of the petition therefor.\* \* \* \*"

"\* \* \*The results of the balloting at each election precinct shall be certified by the judges of election of such election precinct and attested by the clerks and transmitted to the body having control of the capital of the county and township school funds, which said body shall, from such results so certified and attested, within ten days, determine whether the proposal to distribute annually the liquidated capital of the county and township school funds has received a majority of the votes cast in the county or City of St. Louis wherein such election shall have been held. If the proposal to distribute annually the capital of the liquidated county and township school funds shall receive a majority of the votes cast, the body having control of such county and township school funds shall proceed to thereafter distribute annually such liquidated funds to the school districts. The accumulated balance of such funds shall be apportioned on or before August 31 of each year, until such funds are

liquidated and said apportionment shall be based upon the last enumeration on file in the office of the county clerk.\* \*\*

Your inquiry goes to the question of whether or not the special election held under authority of this act may be held on the same day that a General Election is held. In connection with a question similar to this in that the question of whether or not a special election for the purpose of voting bonds could be held on the same day that the General Election was held, I find that this department on December 29, 1945, by an opinion to Mr. Bradford, prosecuting attorney of Phelps county, held that a special election for the purpose of voting bonds could be held on the same day that the primary or a General Election is held. We are enclosing a copy of that opinion with this opinion.

We do not find where a similar question has been before our courts; however, we find that in the State of Illinois in the case of People v. Czarnecki, 143 N. E. 840, 3112 Illinois 271, the court had before it the question of whether or not the election of a state senator to fill a vacancy who was elected at a special election could be held at the same time that the General Election was held. It was held in that case that the special election to fill the vacancy could be held on the same day as the General Election, even though it was classed as a special election. The reasoning of the court was to the effect that it was a special election to fill a vacancy in office and that did not necessarily prohibit the holding of the election on the same day that the General Election was held.

In the case of Furste v. Gray, 42 S. W. (2nd) 889, the Court of Appeals of Kentucky had before it the question of whether or not a special election could be held on the same day that the General Election was held. At l. c. 891, the court, in discussing the question, said:

"Section 148 of the Constitution provides:  
'Not more than one election each year shall be held in this state or in any city, town, district, or county thereof, except as otherwise provided in this Constitution.' \* \* \* "

"Argument that this section applies in this case is answered by a reading of it in connection with section 152, wherein it was 'otherwise provided' that vacancies in the General Assembly may be filled by special election and in such manner as may be provided by law. True, the time for holding the special election may by the

writ be fixed for the same day as the general election, that being in the discretion of the officer issuing the writ, but it is no less a special election, and the issuance of the writ no less prerequisite to its validity."

From examination of the act, we find that the only requirements that the body calling the election must meet are that the proper petitions shall be filed and that the election shall be held within sixty days after the filing of these petitions. No provisions are made in the bill whereby the election cannot be held on a General Election day or wherein they must be held at a time prior to or after a General Election. That being the case, we can see no reason why the election under this act may not be held on General Election day provided sufficient notice of the election has been published.

On your second question as to when the court should proceed to make the distribution of funds provided for in the act in case the voters at such an election approve the proposition for distribution of the funds. As noted in the foregoing provision of Section 2 of the act, it is provided that if the proposal for the distribution of the fund received a majority of the votes cast, the body having control of the funds shall proceed thereafter to distribute annually such liquidated funds to the districts. Then it is provided that the accumulated balance of such funds shall be apportioned on or before August 31 of each year until such funds are liquidated. These provisions of the act show clearly that the law makers intended that these funds be distributed annually, and that they be apportioned on or before August 31 of each year. The act only requires the county court to distribute the funds annually and such distribution must be made on or before August 31. Then it seems that the time of distribution would be left at the discretion of the county court provided it is made annually and on or before August 31 of each year.

#### CONCLUSION

From the foregoing, it is the opinion of this department that the special election, provided for under Senate Bill No. 186 of the 83rd General Assembly for the purpose of testing the will of the voters as to whether or not the county and township school funds shall be distributed and apportioned, may be held on the General Election day in November, 1946, provided sufficient notice of said election has been published. We are further of the opinion that if a majority of the voters voting

Hon. F. M. Brady

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at said election vote in favor of the proposal to distribute the said school funds, then the county court may distribute such funds at any time before August 31, following said election.

Respectfully submitted,

TYRE W. BURTON  
Assistant Attorney General

APPROVED:

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J. E. Taylor  
Attorney General

TWB:VLM