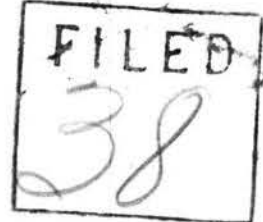


ELECTIONS: In counties under the township organization plan the county court is limited to one voting place in a precinct unless the court should divide the precinct and make an order setting out the boundary and the name of each precinct.

May 26, 1939

Hon. Charles E. Hassett
Prosecuting Attorney
Henry County
Clinton, Missouri



Dear Sir:

We are in receipt of your request for an opinion under date of March 28th, 1939, which reads as follows:

"Henry County is composed of nineteen townships. For many years in several of these townships there have been two or more polling places for the convenience of the electorate of those townships.

"These townships have not been subdivided into election precincts but the county court has merely established more than one polling place in each township and from time to time has opened or closed such polling places. For example in Osage Township, which is a long narrow township, there are three polling places the same being established at Brownington, Mount Zion and Finey. Residents of this township may vote at any one of the three polling places, the presumption being, of course, that they will choose the one nearest to them and vote at only one of them.

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This township has not been sub-divided into three precincts.

"I note Section 10189 R. S. 1929 provides that the various county courts have the power to divide any township into two or more election districts or to establish two or more election precincts in such a township; or alter the same when deemed for the convenience of inhabitants. It occurs to me that the intent of the law is, there be only one polling place for one precinct and that if there is a necessity for more than one precinct or district in a township that such a township should be divided into districts so that the judges and clerks of the polling places of that district will be in a position to permit balloting only by residents of that district.

"We are not concerned with any question of fraudulent voting by reason of this situation and I have not heard of any complaints with respect to that matter. However, it is obvious that such a situation could be abused in that residents of this township could cast ballots in three polling places. My purpose in writing you is to obtain an opinion as to whether or not there should be created more than one polling place in a township unless that township is divided into two or more districts or precincts. There are several townships in this county which by reason of their size probably should be sub-

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divided. However, most of the townships can be adequately served by the establishment of one polling place.

"My county court is contemplating some alteration with respect to these polling places in the county and we should like very much to have an opinion from your office on this question."

Section 10192, R. S. Mo., 1929, reads as follows:

"The place of holding the elections shall be designated, and the judges and clerks of election appointed in such districts or for such election precincts, and the elections therein shall be conducted, in all respects, in the same manner as is hereinafter provided by law for the townships."

This section provides that the holding of an election shall follow the manner and procedure as set out by law for the holding of an election in a township. Henry County is operating under the provisions of the township organization law.

Section 12255 R. S. Mo. 1929, reads as follows:

"The clerk of the county court shall thereupon make out notices for each township, designating the time and

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place for holding the first township election in such township, which shall be holden on the last Tuesday in March next thereafter, and shall deliver such notices to the sheriff of the county, who shall cause the same to be posted up in not less than three of the most public places in the township, and not less than fifteen days before the last Tuesday in March; and the township clerk shall post up notices of all subsequent elections, as directed by the township board of directors."

This section is under article 12, chapter 86, which governs the adoption of township organization, and it will be noticed that this section does not designate more than one place for holding an election in any one township. This section should be strictly construed and it will be noticed further that it does not say "places" for holding the first township election, but states specifically "place" for holding the first township election.

Section 12275 R. S. Mo. 1929, reads as follows:

"Each township acting under township organization may be divided into as many election precincts by the county court as the court may think the convenience of the electors requires; and the judges of all elections held for township purposes shall be appointed by the township board; but if said

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board should fail to appoint judges, or if any of the judges appointed should fail or refuse to serve, or not be present by eight o'clock on the day of election, then the electors present shall have power to choose from their number men to act as said judges. The judges of election shall have power to appoint two clerks of said election. The judges and clerks shall be sworn and the election conducted in like manner as elections for state and county officers, except as provided in this chapter."

Under this section the county court may divide any township into more than one precinct or district for the purpose of holding an election. This section should be construed along with section 10189 R. S. Mo. 1929, which reads as follows:

"The county courts of the several counties in this state shall have power to divide any township in their respective counties into two or more election precincts in any township, and to alter such election districts and precincts, from time to time, as the convenience of the inhabitants may require."

Under section 10189, supra, the county courts shall have the power to divide any township into two or more election districts.

Section 10190 R. S. Mo. 1929, reads as follows:

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"Every order made under the provisions of the preceding section shall describe the several districts erected, and the boundary of each, or the precincts established, and the name of each; and the clerk shall, within twenty days after the making of the order, make out one copy thereof for each district erected or altered or precinct established thereby, and deliver the same to the sheriff of the county, who shall cause one such copy to be put up at a public place in each district, or at each precinct, within six days after the same shall be delivered to him."

Under this section, after the county court has divided the township into two or more election districts, it is mandatory that the several districts set out dividing the township should also set out the boundary of the district or precinct, and also should set out the name of each precinct.

Section 10191 R. S. Mo. 1929, reads as follows:

"If the court fail to designate the place of holding the election or to appoint judges, or the judges appointed fail to act, it shall be the duty of the sheriff to fix the place, and the voters, when assembled, may appoint the judges."

This section is not mandatory, but directory, in that if the section was not followed, it would not

invalidate any election held. It was so held in the case of Breuninger v. Hill, 210 S. W. 67, l.c. 71, where the court said:

"There is no general statute prescribing the manner in which polling places shall be fixed by the county courts of the several counties. The nearest approach thereto is found in the authority conferred upon such courts to establish election precincts. Sections 5801, 5802, R. S. 1909. The succeeding section (5803) impliedly confers upon them the power of fixing the polling places in providing that, upon their failure so to do, the same may be designated by the sheriff. The election here under review, having been held throughout Buchanan county, was not to be regulated by the statute regarding elections in cities of the first class. This question, however, is foreclosed for another reason: That all elections in cities of the first class, of which St. Joseph is one, are required to be held under the general laws of the state. Section 8564, R. S. 1909. Consequently, in construing the statute (Laws 1917, supra) authorizing a county court to submit a proposition to voters for the creation of an indebtedness for the building of roads, we are not confronted with a mandatory statute in regard to the fixing of the polling places, a violation of which would render the election invalid. *

* * * * *

"We have given express judicial approval to the conclusion we have here reached, first, in State ex rel. Canton v. Allen, 178 Mo. loc. cit. 576, 77 S. W. 868, in which we held that where there was no pretense that the election was fraudulent, or that it was not the expression of the will of the people, a change in the polling places was nothing more than an irregularity, and should not be held to invalidate the election (citing cases). This ruling has been subsequently affirmed in the recent case of State ex rel. Memphis v. Hackman, 273 Mo. loc. cit. 695, 202 S. W. 7."

Section 10195, R. S. Mo. 1929, reads as follows:

"Poll books for each district or election precinct shall be made and furnished to the judges of election therein, in the same manner as hereafter provided in respect to poll books for each township, and returns shall be made to the office of the clerk of the county court, as in the case of a township forming one election district."

All of the statutes as above set out should be read together in construing the intention of the Legislature in their enactment, and in reading section 12255, supra, section 10189, supra, and section 10195, supra, together, it was the intention to provide one place of election in each township. It was also the intention if voting was held in more than one place in a township, section 10189, supra, section 10190, supra and section 10191, supra, should be followed.

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CONCLUSION

In view of the above authorities it is the opinion of this department that although the county court of Henry County has allowed election places to be established in three different places of a township, without dividing the township into two or more election districts, that any election so held was not invalid under the holding of the case of Breuninger v. Hill. Nevertheless, it is the opinion of this department, in view of your request, that the county court should follow sections 10189 to section 10192, inclusive, in dividing the townships so that there would be no question on any election in the near future.

Respectfully submitted,

W. J. BURKE
Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

WJB:RW