BOND ELECTIONS: It is not necessary that the name of the county and state be included in the notice of the place of a special bond election if the notice names a locally well-known place for holding such election.

November 5, 1951

11-20-50

Honorable W. H. Holmes
State Auditor of Missouri
Jefferson City, Missouri

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Attention: Mr. Alvin Papin,
Bond Clerk

Dear Mr. Holmes:

This will be the opinion you requested in your recent letter, respecting the validity of the notice for a special bond election held by Anderson Consolidated School District No. C-2 of McDonald County, Missouri, where the notice of said election did not state the name of the County of McDonald and State of Missouri where such Consolidated School District is located and where such bond election was to be held.

Your letter, containing a copy of the notice, reads as follows:

> "Bonds in the amount of $22,000.00, issued by Anderson Consolidated School District No. C-2 of McDonald County, Missouri, have been submitted to this Office for registration. A question has arisen concerning the sufficiency of the notice of election which is in words and figures as follows:
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> "N O T I C E
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> "NOTICE IS HEREBY GIVEN THAT A SPECIAL ELECTION WILL BE HELD THE 9th DAY OF JULY, 1951, FOR THE PURPOSE OF VOTING FOR OR AGAINST THE FOLLOWING PROPOSITION:
>
> "Shall the Board of Directors of Anderson School District C-2 be authorized and empowered to borrow the sum of Thirteen Thousand Five Hundred Dollars (13,500.00) for the purpose of purchasing and installing a new heating plant; and issue

negotiable bonds of said district to secure the payment of said loan; and levy against all taxable property within said school district a sufficient tax increase to pay the interest and retire said bonds as they become due.

"ALL LEGALLY QUALIFIED VOTERS OF THE ANDERSON C-2 DISTRICT ARE ENTITLED TO VOTE.

"THE POLLING PLACE DESIGNATED FOR SAID SPECIAL ELECTION WILL BE AT THE ANDERSON HIGH SCHOOL BUILDING AND THE POLL WILL BE OPEN FROM SIX (6) AND UNTIL SUNSET.

Signed Veda B. Pratt
Clerk of Anderson School
District C-2

"A SIMILAR NOTICE FOR $8,500.00 bonds for the purpose of erecting an Industrial Arts Building was posted on the same date

"The question is whether or not the above notices are sufficient since the county and state in which Anderson School District C-2 is located has been omitted."

You have favored us with a copy of the transcript of the proceedings incident to this bond issue and the presentation of the bonds to you as State Auditor for registration.

It appears from the transcript that the Anderson Consolidated School District No. C-2 was organized in 1925 under the then existing statutes of Missouri, now included in Chapter 165, RSMo 1949, relating to "city, town and consolidated districts," particularly Sections 165.270 and 165.277 thereof, in McDonald County, Missouri.

Section 165.040, RSMo 1949, gives authority to consolidated school districts, such as Anderson Consolidated School District No. C-2 of McDonald County, Missouri, through their Boards of Directors, to borrow money and provide for elections for the voting of bonds and issuance thereof, first having given at least fifteen days' notice of any such election. Section 165.040, RSMo 1949, directs how the notice shall be given, but does not set out any form of notice. Said section, providing for the issuance of bonds, reads, in part, as follows:

> "For the purpose of purchasing schoolhouse sites, erecting schoolhouses, library buildings and furnishing the same, and building additions to or repairing old buildings, the board of directors shall be authorized to borrow money, and issue bonds for the payment thereof, in the manner herein provided. The question of loan shall be decided at an annual school meeting or at a special election to be held for that purpose. Notice of said election shall be given at least fifteen days before the same shall be held, by at least five written or printed notices, posted in five public places in the school district where said election shall be held, and the amount of the loan required, and for what purposes; it shall be the duty of the clerk to sign and post said notices. * * * ."

One of the principal questions to be determined in answering your inquiry is whether the notice of a special bond election by a municipality or political subdivision in fixing the place of such election is mandatory and to be strictly construed requiring strict compliance, or whether it is directory and may be liberally construed under the terms of the statute providing for such notice so that a substantial compliance with the statute will be sufficient.

There is, we believe, a distinction to be drawn between the fixing of the place of the voting in a special bond election in the notice and the period of time a notice must be given preceding such election where a specified number of days or period is provided by the statute as to being mandatory or directory. Recently, our Supreme Court in the case of State ex rel. City of Berkeley v. Holmes, 219 S.W. (2d) 650, held that the number of days specified by statute for the publication of a notice of a special election to issue bonds was mandatory and that nothing less than the full number of days provided by the statutes would answer the statute. The statute in that case provided that "such notice shall be advertised by publication once a week for three consecutive weeks in a newspaper published in the City". The notice was actually published nineteen days. The Court held the election void. Commenting upon the section under which the notice was given in that case, l.c. 653, the Court said:

> "Our Section 7369 does say that notice of such election shall be given in a certain specified way; and our conclusion is that the time of notice specified therein is a mandatory requirement which must be complied with to have a valid special election authorizing an increase in the indebtedness of the City. The Legislature was very specific in stating these requirements as to time of notice, and used mandatory language concerning them, and we do not think we should undertake to modify them or hold that anything less is a substantial compliance with them. Variations as to form of notice or of ballots, which could not mislead voters, may reasonably be held to be substantial compliance. * * "

Here, as has been observed, Section 165.040, RSMo 1949, provides that the notice of a bond election shall be given fifteen days before the election by at least five written or printed notices posted in five public places in the school district where the election shall be held. That was done in this election. The statute does not provide, however, that the name of either the county or the State of Missouri shall be stated in the notice following the corporate name of the consolidated school district in naming the place where the election shall be held. We believe, therefore, under the decision in the Berkeley case, supra, holding that the period for the time of publication for the election in that case was mandatory, because the statute provided the number of days the notice should be published, that here the terms of the statute are directory, and that it is not mandatory that McDonald County, Missouri, be designated as a part of the place where such election would be held, in addition to the definite statement that the polling place would be in the High School Building in the Anderson Consolidated School District No. C-2. But if it should, under any theory, be deemed an omission or a defect in the notice to not include the county and state in naming the place of a special election, the text writers and courts have written text and decisions to the effect that, if such provisions are not mandatory, a substantial compliance with the statute is sufficient, even though there are irregularities or omissions in a notice of a bond election. 18 Am. Jur. 248, 249, Section 110, on this subject, generally, states the following:

> "The effect of an irregularity in the giving of the prescribed notice may depend upon, or be affected by, the character of the election. It is clear that since an entire failure to give the notice required by statute does not necessarily avoid a general election, an imperfect or defective notice which does not mislead electors so that they lose the right to exercise their franchise certainly will not do so. It is equally clear in the case of special elections wherein the necessity for notice is so much more urgent that the rule as to compliance with statutory requirements in the giving of notice should be much more strictly enforced. Considerable liberality is, however, allowed even in these elections and it is a rule of pronounced authority that the particular form and manner pointed out by a statute for giving notice is not essential, provided, however, there has been a substantial compliance with statutory provisions. Following this rule, it has been held that where the great body of the electors has actual notice of the time and place of holding the election and of the questions submitted, the requirement as to notice is satisfied. Thus, the formalities of giving notice, although prescribed by statute, are frequently considered directory merely in the absence of an express declaration that the election shall be void unless the formalities are observed. This liberal rule is based upon the theory that where the people have actually expressed themselves at the polls, the courts are strongly inclined to uphold, rather than to defeat, the popular will. * * * "

The Appellate Courts of this State have had before them and have decided cases involving similar questions to the one here being considered, although the precise objection that a notice of a bond election was invalid because the county and state were not named in the notice designating the place where the election was to be held was not raised in such cases. However, it was in such cases held that notices very similar to the notices in the matter being considered here were valid. Some of the notices upheld named the city, county and state where a bond election was to be held, but failed to name the polling places. Others named simply the town where the election was to be held. The case of State ex rel. Mercer County, et al.

v. Gordon, State Auditor, 242 Mo. 615, was such a case and was before the Supreme Court on the question that the notice for a county bond election failed to designate the polling places in the county where such election was to be held. The notice did name "the County of Mercer and State of Missouri" where the county bond election would be held, but failed to name the city or the polling places where the election would be held. The Court held the notice was not misleading and that the matter should be given a liberal construction, and that there was sufficient place stated where the election would be held. The Court so holding, l.c. 624, said:

> "It is rare indeed that anyone desiring to cast a vote in a special election has any difficulty in finding the place where the election is to be held. Either those urging the adoption of the measure submitted or those desiring its defeat, will take such an interest in the result of the election that everyone who may desire to vote thereat will have no difficulty in finding the place where he should cast his ballot.
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> "As we understand the theory of respondent, he contends that in special elections held for any purpose, all provisions of the election law governing such special elections are mandatory and must be observed with the utmost strictness; otherwise, such special elections will be void. Such is not the spirit of the more modern adjudications on that subject. The law contemplates that everything necessary shall be done to afford the voters a free and fair opportunity to vote yes or no on the proposition submitted, and unless some mandatory statute has been violated, or something has been done or omitted which has deprived the voters of a free and fair expression of their will, such election should be upheld. * * * "

The case of State ex rel. Marlowe, Collector v. Lumber Company, et al., 58 S.W. (2d) 750, was before the Supreme Court primarily on the question of the payment of taxes in favor of the Morehouse School District in New Madrid County, Missouri. The principal question in the case and determined by the Court was whether the notice for an election to increase the tax levy in excess of the constitutional limit, which could only be increased by a vote of the taxpayers of the school district,

at an election, lawfully called and held for that purpose, was valid or invalid because such notice did not name the place where the election should be held. The case is important here, since it makes a clear distinction between the necessity of a notice stating the time of holding such election and the place of holding such an election. The case is quite too lengthy for extensive quoting. We shall quote parts of the decision most appropriate to the question here as showing that the name of the place of the election in the notice is not mandatory and may be supplied by the record of the proceedings initiating and consummating such election. Perhaps it would be well for those interested to read the entire opinion in the Marlowe case to better observe the effect of the decision on the question of such distinction. The notice given by the Morehouse School District did not name the place of the election, but said the election should be held at "the usual place of holding elections for members of such board." Pertinent to the definite point before us here as to the notice specifying the place of the election, the Court, l.c. 752, said:

> "In State ex rel. Gentry v. Sullivan, 320 Mo. 362, 8 S.W. (2d) 616, 618, the notice of an election to be held in a consolidated school district specified the place of the election as 'at Stoutland,' a village of some 300 people. The election was actually held at the Christian Church in that town by making public announcement on the street just before the voting began. As to this the court said: 'Before the voting commenced the county commissioner made a public announcement that the election would be held at the Christian Church. It was accordingly held at that place. No evidence having been adduced that any voter was deprived of his right to vote by reason of the general nature of the notice, no right was impaired or privilege denied, and we are, in all fairness, prompted to overrule this contention. In so doing we are not without a precedent therefor in our own rulings. State ex inf. Poage v. Higley (Mo. Sup.) 250 S.W. 61.'
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> "Defendant cites State ex rel. v. Martin, 83 Mo. App. 55, and Harrington v. Hopkins, 288 Mo. 1, 231 S.W. 263, but we find nothing therein justifying our holding the annual school election void for failure to sufficiently apprise the voters of the place where the election was held, and we rule this point against defendant."

The case of State ex rel. v. Martin, 83 Mo. App. 55, cited in the last immediate quote was one of the Court of Appeals' cases cited by the Supreme Court in the case of State ex rel. City of Berkeley v. Holmes, State Auditor, supra, as holding a statute mandatory which prescribes a definite number of days in which the publication of a notice of a special election must be published. The only point before the Supreme Court and decided by the Court in the Berkeley case, supra, was on the question of the length of time of the publication of the notice for a special election. In the Marlowe case, supra, last above quoted, the Court states that nothing is found in the State ex rel. v. Martin case, supra, to hold the election in the Marlowe case void for failure to sufficiently apprise the voters of the place where the election was to be held, and ruled the point against the defendant because the notice in the State ex rel. v. Martin case, 83 Mo. App. 55, was treating only with the question of the number of days of the publication of the notice and had nothing to do with the fixing of the place of the election. The case of Harrington v. Hopkins, 288 Mo. 1, 231 S.W. 263, cited along with the Martin case in the Marlowe case, supra, does not definitely refer to the question here being considered, hence we pass it by.

The Supreme Court, in the case of State ex rel. Gentry, Attorney General v. Sullivan, et al., 8 S.W. (2d) 616, in quo warranto, upheld a notice of an election to organize a consolidated school district which stated merely that the election would be held "at Stoutland" which was the name of the town within the boundaries of the proposed consolidated district. The Court sustained the information and gave its judgment of ouster of the director on other grounds. However, in approving the sufficiency of the notice fixing the place of the election, the Court, l.c. 618, said:

> "The concrete contention as to the regularity of the election is that the place where it was to be held was not designated, other than 'at Stoutland,' and that the notice was void in not being founded on the petition and plat; that, in the absence of a specific designation of the place where the election was to be held, the voters had no knowledge of the same until just before the voting began. The evidence discloses that Stoutland is a small village of not more than 300 people. Before the voting commenced the county commissioner made a public announcement that the election would be held at the Christian Church. It was accordingly

> held at that place. No evidence having been adduced that any voter was deprived of his right to vote by reason of the general nature of the notice, no right was impaired or privilege denied, and we are, in all fairness, prompted to overrule this contention. In so doing we are not without a precedent therefor in our own rulings. In State ex inf. Poage v. Higley (Mo. Sup.) 250 S.W. 61, under a state of facts similar to those at bar, we held that, where the place at which a consolidation school election was held was in a small town of not more than 300 people, a notice of a special meeting to vote on a consolidation which simply designated the town as the place of holding the same was sufficient."

In the notice of the election here being considered, the polling place was plainly set forth in the notice as being at "the Anderson High School Building". The case of State ex rel. v. Hackman, State Auditor, was before the Supreme Court, reported in 273 Mo. 670, on mandamus to compel the registration of bonds voted by the town of Memphis, Missouri, where it was charged that the election was invalid because the ordinance calling said election did not provide for the voting places for same, but said that the bond election should be held "at the usual voting places in each ward of said city". The Court held the election valid, and, in approving the form of the notice as to the general terms of naming the places where the election would be held, l.c. 694, 695, said:

> "Error is alleged in the failure of the board of aldermen to fix the polling places other than as 'the usual voting places in each ward in said city.' Neither in the respondent's return nor in the testimony, nor in the findings of the commissioner, is there anything to indicate that this election was-except in one instance to be adverted to later--not held at the usual voting places in said city. The contention peeps over the parapet, therefore, for the first time in respondent's brief, 'coming like the herald Mercury new lighted,' etc. This aside, however, we have had occasion, as has our courts of appeals, to carefully consider this objection, holding that we will presume, in the presence of a showing of fairness in the election and the consequent absence of any

> pretense of fraud, that the board performed its statutory duty in the matter here complained of and that the election was held at usual voting places in said city. We are apprised by the record that relator is a small city of less than two-thousand population. To presume, therefore, that the voters encountered any difficulty in ascertaining their respective places of voting or that they were in anywise hindered in the exercise of this right is not sustained by reason or in accord with human experience. * * * "

The case of Beauchamp v. Consolidated School District, 297 Mo. 64, was before the Supreme Court of this State on the question of whether a notice of a proposed bond election by Consolidated School District No. 4, situated in the town of Avalon, Livingston County, Missouri, was sufficient which stated that the place of the voting would be "at the voting room in Avalon". The board in calling the election had provided that the matter of voting bonds would be submitted to the qualified voters of Consolidated District No. 4, a proposition to authorize the School Board to issue bonds for the purpose of repairing, remodeling and equipping the school building in Consolidated District No. 4 situated in the town of Avalon, Livingston County, Missouri. The notice of the election, however, was that the election should be held in the voting room in Avalon. The Court held the notice stating the place where the election would be held to be in the "voting room in Avalon" was sufficient. The Court, l.c. 72, said:

> " * * * The place was sufficiently designated. The village named is a small one. The 'voting room' mentioned was known to all; had been used for years for the elections, annual and otherwise, in the district and all other local elections, as well; and there is no evidence that any voter was deceived or misled as to the place of voting, but quite the contrary. In such circumstances it is well settled that an objection such as is here made to the notice of the place of election is without force. * * "

The transcript of the proceedings resulting in this bond issue reveals in many instances and places that Anderson Consolidated School District C-2 was then and is now located in McDonald County, and that McDonald County was and is located in the State of Missouri, and that such bond election was to be held and was held in said school district in McDonald County,

Missouri. We believe the notice given of said special election as supported by the record here is in substantial compliance with the statute requiring such notice, and was sufficient.

The transcript of these proceedings, page 13, contains a recital that the Circuit Court of McDonald County, Missouri, duly entered a pro forma decree adjudicating the validity of such bonds issued by the district under the provisions of Sections 108.310, 108.320, 108.330 and 108.340, RSMo 1949. These sections provide authority for such decree.

The certificate of the officers of said school district certifying the truth and regularity of the proceedings herein states:

> "We further certify that there is no controversy, suit or other proceeding of any kind pending or threatened wherein or whereby any question is raised or may be raised, questioning, disputing or affecting in any way the legal organization of said municipality or its boundaries, or the right or title of any of its officers to their respective offices, or the legality of any official act shown to have been done in the foregoing transcript, or the constitutionality or validity of the indebtedness represented by the bonds shown to be authorized in said transcript, or the validity of said bonds, or any of the proceedings had in relation to the issuance or sale thereof, or the levy and collection of a tax to pay the principal and interest thereof."

It thus appears that, since no appeal was taken from such pro forma decree issued by said Circuit Court, its judgment, therefore, became, and now is, final, conclusive and binding upon the district issuing such bonds, and that the legality of such bonds is not subject to being questioned by any other court, and that the holder, or holders, of such bonds shall be conclusively deemed to be a holder, or holders, in due course, for values without notice of defect or infirmity. It is provided in Section 108.330, supra, that this shall be the status of such bonds upon the entering of such decree, if no appeal be taken therefrom.

It appears, therefore, that the proceedings out of which this bond issue arose, including the notice of the election to vote such bonds, are all, as we view them, in all respects legal.

Honorable W. H. Holmes

It further appears that the pro forma decree of the Circuit Court of McDonald County, Missouri, adjudging said bonds to be valid, is final, and that there is here no charge that any person was misled, or denied the right at said election to cast his or her ballot, and that the bonds are free of any legal controversy. It is our belief that no lawful reason or ground exists by which there should be any question to the sufficiency of the notice of said special election or the validity of the bonds, and that such bonds should be registered by the State Auditor.

CONCLUSION

It is, therefore, the opinion of this department, considering these proceedings and the above-cited authorities, that the notices of the special election given by Anderson Consolidated School District No. C-2 of McDonald County, Missouri, here considered, did sufficiently name the place where said special election would be held and where the question of issuing bonds in two instances by such district for the purpose of installing a new heating plant and for the purpose of erecting an Industrial Arts Building in the district would be voted upon in said district, are sufficient without stating the name of the County of McDonald and State of Missouri as a part of the place where said special election would be held, and that the bonds here submitted to your department for registration are valid and are eligible to registration by the State Auditor, and should be registered by him.

Respectfully submitted,

GEORGE W. CROWLEY
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

GWC:VLM