

SCHOOLS: The notice of election to vote on bond issue should contain the time the polls open and also the time they close.

3/10

March 9, 1938.



Honorable Charles A. Moon
Assistant Prosecuting Attorney
Greene County
Springfield, Missouri

Dear Sir:

This Department is in receipt of your letter of March 4, wherein you request the opinion of this Department as follows:

"The County School Superintendent of Greene County has requested an opinion from your office in connection with Sections 9198 and 9283, Revised Statutes, Missouri, 1929, regarding the voting of a bonded indebtedness in the rural school districts.

"It seems that some of the school districts have taken the position that the polls at a Special School Election, for the purpose of voting a bonded indebtedness, should be held open all day as is the case in an election of this kind in the city.

"Hence, he would like to know if it is not proper to call the Special Election at the district schoolhouse at 2 o'clock, P. M., by special notices posted, according to law, transact the special business by those present, and adjourn the meeting?"

Section 9283, R. S. Mo. 1929, refers to the annual meeting. The powers and the various business objects of the meeting are contained in Section 9284, R. S. Mo. 1929. The pertinent part of Section 9283, supra, is as follows:

"The annual meeting of each school district shall be held on the first Tuesday in April of each year, at the district schoolhouse, commencing at 2 o'clock p. m. * * * * *"

Section 9198, R. S. Mo., 1929, seems to be the section under which the proposed bond election is to be conducted. Said section contains the following provision:

"For the purpose of purchasing school house 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. The qualified voters at said election shall vote by ballot. * * * * *"

In the decision of State v. Consolidated District No. 1, 238 S. W. 819, it is held that the statutes affecting

the organization, functions and powers of a district are not to be strictly construed. Likewise, is the decision to the same effect, relating to country school districts, in State v. McKown, 290 S. W. 123. In an election of any nature usually the tests relating to the proceedings on election day are: Have the voters been given an opportunity to register their choice on any proposition, or exercise their right of franchise on any matter; and, is the election without fraud?

We think the matter, as contained in your letter, is fully discussed and decided in the case of State ex rel. Muns v. Hackmann, 283 Mo. 469, l. c. 476, as follows:

"It is insisted the polls should have been opened at seven o'clock a. m. and kept open until six o'clock p. m. instead of from two o'clock p. m. to six o'clock p. m. They were opened and closed at the hour fixed by the order of the board and the notice of election. The position of respondent is that the board had no power to fix the hours it did and that, therefore, the election is void. It is stipulated that the number of qualified voters in the district was approximately four hundred; that only once in seven years had the number of votes cast exceeded the number cast in the election in question; that there was no congestion at the polls and that 'the officers of said election could easily have accommodated twice the number of voters that actually voted.' There is no contention that any voter was prevented from voting by reason of the hours fixed by the board or that the result was in any way affected. The statute (Sec. 10777, R. S. 1909) fixes no hours for opening and closing the polls at bond elections. Election by ballot is provided and

the form of the ballot is prescribed. It is argued that since the hours are not prescribed, 'then such election shall be conducted in the manner prescribed by law for other elections by the same body.' (State ex rel. v. Hackmann, 218 S. W. 1. c. 324.) If this principle be conceded to be applicable, the 'other elections' provided by the statute become pertinent. At the annual election in town districts (Sec. 10879, R. S. 1909) it is provided that the polls shall be open from seven o'clock a.m. to six o'clock p. m. If this were the only provision for the elections in such district, the question presented would be easily solved, under the concession already made. It is not the only one. In Section 10870, Revised Statutes 1909, it is enacted that the election for disorganizing a town district shall be held at a meeting, after notice, and if two-thirds of the resident voters and taxpayers vote at such meeting for dissolution, the district stands dissolved. In the same article (Sec. 10865, R. S. 1909) the method of organizing city, town and consolidated school districts is provided. The voting is by ballot and it to be done at a meeting held for that purpose, pursuant to notice. Respondent does not point out any reason for selecting one rather than another of these methods under the rule he invokes.

"By Section 10920, Revised Statutes 1909, the State Superintendent of Schools is required to cause to be distributed to school officers and

authorities, copies of the school laws, separately bound, 'with instructions for carrying into execution of such laws.' It is stipulated that in his instructions for carrying on an election under Section 10877, the State Superintendent had long before furnished a form of notice of election which fixed the opening hour at two o'clock p. m. This 'instruction' relators followed in calling the election here involved, as many school boards, doubtless, had previously followed it in calling like elections. Of course, the State Superintendent cannot amend a statute, but an administrative construction of a doubtful statutory provision is entitled to weight, particularly after it has been acquiesced in by the Legislature for years and securities issued and bought and sold in dependence upon it. There is a reason for the provision that at annual elections the polls shall be kept open from seven a. m. to six p. m., which reason does not apply to bond elections called for special dates; i. e., such elections are held in conjunction with municipal elections at which the time during which the polls shall be open is fixed by other statutes. In the circumstances, there is no sound reason which compels a holding that the established practice which has long prevailed in pursuance of instructions authorized by the Legislature so conflicts with the law that the act of the relators in following it renders the election in this case void. The alternative writ is made peremptory. All concur."

Bearing in mind the general principles which we have heretofore mentioned, we are of the opinion that it would be proper for the Board to call the special election at the district schoolhouse at 2 o'clock P. M., and that the same should be incorporated in the notice of the election. But, as Section 9198, supra, provides for the voting to be by ballot, we think the notice should also contain the time for closing the election as this will give everyone qualified to vote in the district an opportunity to do so; and that the logic as contained in the decision of State ex rel. Muns v. Hackmann, supra, should be followed.

Yours very truly

OLLIVER W. NOLEN
Assistant Attorney-General

APPROVED:

J. E. TAYLOR
(Acting) Attorney-General

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