

ELECTIONS: Tax levy election not invalid because only one polling place was designated by county court.

December 13, 1949

12/15/49

Honorable Harry J. Revercomb
Senator, 17th District
Capitol Building
Jefferson City, Missouri



Dear Sir:

Your recent request for an official opinion has been assigned to me to answer. Your request is thus stated:

"I have been asked by a very good friend of mine who is a county official to request an opinion from your office on the following:

"This particular county is a 3rd class county under township organization. Some time ago a special election was held in one of the townships in this county submitting to the voters of the township the question of levying an additional 35¢ tax for road and bridge purposes. As it was a special election the township board decided to vote at only one polling place in the township. In every other manner the election was held as provided by law. Now certain opponents of the tax contend that the election was invalid because there were not 3 polling places in three different precincts.

"Will you please let me have your opinion as to the legality of the election in view of the above statement and mail to my office in Jefferson City."

This election, we assume, was called and held under an Act found in Laws of Missouri, 1945, page 1478. This Act states:

"Whenever ten or more qualified voters and taxpayers residing in any general or special road district in any county in this state shall petition the county court of the county in which such district is located, asking that such court call an election in such district for the purpose

of voting for or against the levy of the tax provided for in the second sentence of the first paragraph of Section 12 of Article X of the Constitution of Missouri, it shall be the duty of the county court, upon the filing of such petition, to call such election forthwith to be held within 20 days from the date of filing such petition. Such call shall be made by an order entered of record setting forth the date and place of holding such election, the manner of voting and the rate of tax the court will levy, which rate shall not exceed thirty-five cents on the hundred dollars assessed valuation on all taxable real and tangible personal property in the district. A copy of such order shall be published in two successive issues of any newspaper published in such district, if any, and if no newspaper is published in such district, three certified copies of such order shall be posted in public places in such district. The first publication in said newspaper and the posting of such notice shall be not less than ten days before the date of such election. Such court shall also select one or more judges and clerks for such election to receive the ballots and record the names of the voters."

Your question is whether the above election was invalid because there were not three polling places in three different precincts in this township.

You will note that the Act, cited above, states that "such call (by the county court) shall be made by an order entered of record setting forth the date and place of holding such election." (Supplementing your opinion request you have informed us orally that the election was called by the county court in compliance with the Act cited above, and that where you state in your letter that the township board decided to vote at only one polling place in the township, that this was simply a recommendation by the board to the county court and that the order for holding the election at only one place was made by the county court.)

This Act clearly gives the county court the right to designate the place of voting. We believe that under this Act the court could designate more than one place if it thought this to be necessary, but that this is a matter within the court's discretion. In the exercise of this discretion in the instant case the court chose one place only, which the Act clearly gives them the right to do.

Upon this point we call your further attention to the case of *Armantrout v. Bohon*, 162 S.W.(2d) 867. There the court said: (l.c. 870, 871 and 872)

"The allegation which the appellant deems conclusive is that only one voting precinct was designated or provided for the City of Hannibal and 'as a result many people who would have voted for her were not given the privilege and opportunity of voting and exercising their rights under the laws of the State of Missouri.' Omitting all the formal prerequisites which are well stated the notice says: 'That it was shown by the official canvass of the votes returned to the County Clerk of the Marion County Court that a total of 4347 persons voted at said election. (Contestee received 2241 votes and contestants received 2106 votes.) That the records * * * * * further show that there were 50 voting precincts in Marion County for said election. The record of said court further shows that there was only one voting precinct provided for the entire City of Hannibal and adjacent and outlying territory, to wit, at the Hannibal Court of Common Pleas Court House in the City of Hannibal, Missouri. And further, that of the entire total vote cast, to wit 4347, a vote of 2141 or approximately one-half of the total vote cast was * * * at the one voting precinct. * * *

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"As the appellant suggest, 'elections should be so held as to afford a free and fair expression of the popular will.' State ex inf. *McKittrick v. Stoner*, 347 Mo. 242, 146 S.W. (2d) 891, 894. But 'elections are not lightly set aside' and there is a vast difference in passing on the rules and regulations regarding the conduct of an election before the election is held and after. 29 C.J.S., Elections, Sec. 249, p. 360; 18 Am. Jur., Sec. 206, p. 319. As a general rule an election will not be annulled even if certain provisions of the law regarding elections have not been strictly followed in

in the absence of fraud. State ex rel. Miles v. Ellison, supra. As to whether the election was conducted in accordance with the law the matter is aptly covered in Breuninger v. Hill, 277 Mo. 239, loc. cit. 247, 210 S.W. 67, loc. cit. 69: 'A first essential, therefore, in the determination of the matter at issue, is whether any of the mandatory provisions of the Constitution or statutes regulating the rights of voters and the calling and conduct of the election, have been violated.'

"As we understand it, the appellant does not contend that any mandatory law, constitutional or statutory, was violated and we are unable to find any such violation from her allegations. The quoted statute (Sec. 10483, R.S. Mo. 1939, Mo. R.S.A. Sec. 10483) says the voting shall be 'at such convenient place or places * * * as the board may designate.' It may 'at the option of the board' be held at the same time and place as city elections are held in certain counties. But none of these provisions may be construed as mandatory. It does not appear that any city elections were being conducted at the time. There are times conceivably, when one voting place in Hannibal would be adequate for the submission of school matters to the voters of the district, although we doubt that to be the case when there is a contest over the office of county superintendent. But even so, we cannot say that the board's designation of only one voting place in that district was a violation of any mandatory provision of the law, even though it did not provide places easily accessible and convenient to the voters. The board may not have used the best judgment in selecting voting places but that only one place was designated, in this instance, and under the circumstances, is not such an abuse of their discretion, or disregard of the election laws that the election may be invalidated for this reason. 18 Am. Jur., Sec. 113, p. 251; Kerlin v. Devils Lake, 25 N.D. 207, 141 N.W. 756, Ann. Cas. 1915C, 648. See the irregularities complained of and held not to invalidate the elections in State ex rel. Muns v. Hackmann, 283 Mo. 469, 223 S.W. 575; Breuninger v. Hill, supra; State ex rel. Marlowe v. Himmelberger-Harrison

Lumber Co., 332 Mo. 379, 58 S.W.(2d) 750;
State ex inf. Mansur v. McKown, 315 Mo.
1336, 290 S.W. 123. In city elections
where the statute or ordinance specified
four wards and a polling place was provided
in only one it has been held the election
was valid. State ex rel. Brown v. Town
of Westport, 116 Mo. 582, 22 S.W. 888;
Lebanon Light & Magnetic Water Co. v.
City of Lebanon, 163 Mo. 246, 63 S.W. 809.
Or, conversely, to have four voting places
when the ordinance says one does not invalidate
the election. State ex rel. Town of Canton
v. Allen, 178 Mo. 555, 77 S.W. 868. For
allegations of conduct in such disregard of
the law as to invalidate the election see State
ex rel. Miles v. Elms, supra; State ex inf.
McKittrick v. Stoner, supra."

CONCLUSION

It is the opinion of this office that the instant election
was not invalid because only one polling place was provided.

Respectfully submitted,

HUGH P. WILLIAMSON
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

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