

ABSENTEE BALLOTS: An absentee ballot may be cast in the regular election held for the purpose of electing a county superintendent of schools.

March 21, 1951

3-22-51

Honorable James T. Riley, Prosecuting Attorney
Cole County
Courthouse
Jefferson City, Missouri



Dear Sir:

This department is in receipt of your recent request for an official opinion. You thus state your opinion request:

"I will appreciate receiving your ruling on the following question:

"Do the statutes providing for the voting of absentee ballots apply to the election of the County Superintendent of Schools?

"As you know this election is to be held on April 3rd, for that reason I would like to have an early expression from your office."

In regard to the above, we would first direct attention to Section 167.010, RSMo 1949, which states, in part:

"The qualified voters of each and every county in this state shall elect a county superintendent of public schools at the annual district school meeting held on the first Tuesday in April, 1943, and every four years thereafter. * * *"

We would next direct attention to Section 112.010, RSMo 1949, which states:

"Any person being a duly qualified elector of the state of Missouri, other than a person in military or naval service, who expects to be absent from the county in which he is a qualified elector on the day of holding any special, general or primary

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election at which any presidential preference is indicated or any candidates are chosen or elected, for any congressional, state, district, county, town, city, village, precinct or judicial offices or at which questions of public policy are submitted, or any person who through illness or physical disability expects to be prevented from personally going to the polls to vote on election day, may vote at such election as herein provided."

It is clear that the election to elect a county superintendent of schools is an election for a county office.

The following Sections, 112.020, 112.030, 112.040, and 112.050, state the method by which a person who is entitled by Section 112.010 quoted above, to cast an absentee vote, may do so.

It would seem clear from the above that if the election at which a county superintendent of schools is elected is either a "special", a "general", or a "primary" election, that absentee ballots could be cast in such an election. In this regard, we will therefore first consider whether such an election could properly be termed a "general" election.

Chapter 1, Section 1.020, paragraph 3, RSMo 1949, states that:

"'General Election' means the election required to be held on the Tuesday succeeding the first Monday of November, biennially;"

The same definition of "general election" is given in the statutes of 1939, 1929 and 1919. It may be added that in the statutes of 1919, the section giving this definition is 7058.

On December 6, 1928, the Missouri Supreme Court, in Banc, rendered its decision in the case of Dysart vs. City of St. Louis et al, 11 S.W. 2d, 1045. In that case the court was concerned, in part with defining general, special, and primary elections. In the course of that opinion the court said, in part, (l.c. 1052):

"But the definition of 'general election' is settled by an amendment to the Constitution

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adopted in 1920 (see laws 1921, page 703), by which Section 12 of Article 10 was repealed, and another section by the same number adopted. It provides:

"No county, city, town, township, school district or other political * * * subdivision of the state shall * * * become indebted,' except by a two-thirds vote at an election held for that purpose; and, 'such proposition may be submitted at any election, general or special.'

"It follows that any local election, city, county, etc., may be either general or special, and this wipes out the definition of 'general election' in section 7058, or limits the implied distinction to state elections.

"It necessarily means that a special election is one called for a special purpose, not one fixed by law to occur at regular intervals. * * *"

Further on in the opinion, the court cites, with approval, the case of State ex rel. Fish v. Howell, 110 Pac. 388, and quotes the following portion of that opinion:

"It is not necessarily the time or manner of holding an election to fill a vacancy that makes it a special election, but the fact that it is held at a time other than the time fixed by law to elect an officer for the regular or defined term."

We are unable to find that the above holdings have been changed or modified by subsequent Missouri Appellate Court decisions. In this connection, we will also direct attention to the case of People ex rel. Elder v. Quilici, 33 N.E. 2d, 492, which states, in part, that a "general election" means the selection of officers to serve after the terms of former officers; that the case of Lively v. Brown, 202 S.W. 2d, 371, holds that a "general election" is held to select an officer after the expiration of a former officer's full term, whereas "special election" is held to fill a vacancy on a day other than a prescribed regular election day and before the time of a general election for a full term, or to vote upon some special measure;

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that the case of Grant v. Payne, 107 Pac. 2d 307, also holds that a "general election" is for the purpose of selecting an officer after the expiration of the full term of a former officer. Numerous other cases could be cited which have the same holding in this respect.

It will be observed that in the portion of the Dysart opinion quoted above, the Supreme Court of Missouri greatly amplifies the definition of "general election" given in Section 7508, RSMo 1919 (now Section 1.020, RSMo 1949), and that the amplification includes county elections, the dates of which are fixed by law.

We are familiar, as of course the Missouri Supreme Court was familiar at the time it rendered the Dysart opinion, with the case of State of Missouri, Respondent, v. Henry Searcy, Appellant, 39 Mo. App. 393. This case, in which the opinion was rendered by the St. Louis Court of Appeals on February 18, 1890, specifically holds (l.c. 405) that the general school election required by law to be held in all counties of the state on the first Tuesday in April, is not a "general election". The court bases this conclusion upon the definition of "general election" given in Section 3126, R.S.Mo. 1879, which, as we stated above, is the same definition given in Section 1.020, RSMo 1949, paragraph 3, which definition was given by us above.

However, in the Dysart opinion, the Missouri Supreme Court does not mention the Searcy case, which leads us to believe that the Missouri Supreme Court, at the time (1928) of writing the Dysart opinion, did not consider that the Searcy case advanced a tenable theory of law, and that therefore it was the intention of the court, in the Dysart case, to overrule the Searcy case by implication.

In view of the Dysart case, cited, in part, above, and of the other cases also cited, it is the opinion of this department that the county election held every four years at a time fixed by law, for the purpose of electing a county superintendent of schools, is a "general election" within the meaning of Section 112.010, RSMo 1949, et seq., and that, therefore, an absentee ballot can be cast in such an election, subject to the qualifications set forth in said Section 112.010, et seq.

CONCLUSION

An absentee ballot may be cast in the regular election held for the purpose of electing a county superintendent of schools.

Respectfully submitted,

HUGH P. WILLIAMSON
Assistant Attorney General

APPROVED:

