

ROADS AND BRIDGES: Town board cannot vote by mail in eight-mile road district, when the city limits of the city is not situated more than ten miles from county seat.

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February 26, 1943

Honorable H. Tiffin Teters  
Prosecuting Attorney  
Jasper County  
Carthage, Missouri

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Dear Sir:

We are in receipt of your request for an opinion, under date of February 20, 1943.

This request involves solely the construction of Section 8675 R. S. Missouri, 1939, and reads as follows:

"I have been requested by the County Court to ask your opinion concerning a part of Sec. 8675, R. S. Mo. 1939. The statute states that 'provided, that where the city is located a greater distance than ten miles from the meeting place of the County Court', the City officials may transmit their decisions by mail. This problem has presented itself:

"The distance from the County Court house to the city limits of a city is 9.5 miles, while the mileage from the Courthouse to the City Hall on Broadway is 10.1 miles. Which is the determining factor?

"Should the mileage be to the city limits, or to the business district, or to the City Hall?"

You state that the distance from the county courthouse to the city limits of the city is 9.5 miles.

Section 8675 R. S. Missouri, 1939, reads as follows:

"The mayor and members of the city council of any city or town within any special road district thus organized, together with the members of the county court of the county in which said district is located, at a meeting to be held in the county court room, at which meeting the presiding judge of the county court shall preside and the county clerk shall act as clerk, within two weeks after the voters within the territory of such proposed district shall adopt the provisions of this article, shall, by order of record to be kept by the county clerk, appoint a board of commissioners composed of three persons, designating one to serve for three years, one for two years and one for one year, and in February every year thereafter one commissioner shall be appointed as above specified, to serve for three years; all such commissioners shall be resident taxpayers of the district, and shall serve until their successors are appointed and qualified, vacancies to be filled as original appointments are made. Resignations shall be to the county clerk. Removal from the district shall create a vacancy. Such commissioners, before entering upon the discharge of their duties, shall take oath of office, to be administered by the clerk of the county court: Provided, that where the city is located a greater distance than ten miles from the meeting place of the county court, the mayor and city council of the city or town within the road district for which commissioners are to be appointed, may

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make a written certificate of their choice of the commissioner or commissioners to be appointed, designating their first, second and third choice and seal the same and transmit it to the county clerk by mail or by special messenger and the choice and selection designated in such certificate shall be given the same consideration as though the board and mayor were present at the meeting of the court: Provided, that such certificate shall be given over the signature of the mayor or acting mayor attested by the seal of the city and signature of the city clerk." (Under-scoring ours.)

Under the above section the legislature saw fit to say, "Provided, that where the city is located a greater distance than ten miles from the meeting place of the county court," and did not say, where the business district or city hall is located. This shows that it was the intention of the legislature that the distance between the meeting place of the county court and the city itself must be more than ten miles before the mayor and members of the city council could designate their choice by transmitting it to the county clerk by mail.

The above section is unambiguous and needs no construction. Since it sets out the procedure that should be followed, only that procedure should be followed. (State ex rel Kansas City Power & Light Company v. Smith, State Auditor, 111 S. W. (2d) 513.) In that case it was specifically held that the expression of one thing in the statute is the exclusion of another. Section 8675, supra, specifically states that the city must be a greater distance than ten miles from the meeting place of the county court. There is no mention of the business district or the city hall in that section. The courts, in construing that section, could not interpolate the words, "business district" or "city hall." Such a ruling was had in the case of St. Louis Rose Company v. Unemployment Compensation Commission, et al, 159 S. W. (2d) 249, pars. 2-4, where the court said:

"In order to sustain the commission's contention it would be necessary for us to substitute the term 'farm labor', a narrower classification, for 'agricultural labor' or to write into the law that only such agricultural labor as is performed on a farm is exempt. This we may not do. In view of the commonly understood meaning of the term the legislature would have included such a restriction had it intended one. Nor can we impose such a restriction through the doctrine of strict construction of a tax exemption provision. There is no ambiguity here. Where there is no ambiguity there is no need for either a liberal or strict construction. \* \*"

Under the above section, it is mandatory that the members of the town board meet with the county court within two weeks after the voters in such a district shall adopt the provisions of Article 10, Chapter 46 of the Revised Statutes of Missouri, 1939. At the meeting in the county court room the presiding judge shall preside, and the county clerk shall keep a record. At this meeting the commissioners for the road district shall be appointed, one for three years, one for two years, and one for one year. The same procedure as for original appointment is followed when vacancies occur.

When the meeting of the county court for the city, town or village officers is called, the city, town or village officers each are entitled to vote,

It was so held in the case of State ex inf. Holt, Pros. Attorney, ex rel. Jones v. Meyer, 12 S. W. (2d) 489, l. c. 490, where the court said:

"Respondent, Meyer, contends that under section 10802, R. S. 1919, the mayor and councilmen are each entitled to cast a vote for commissioner.

"Relator, Jones, contends the mayor and councilmen sit as one member of the county court and together have only one vote, and that, two members of the county court having voted for him, he thereby received a majority of the legal votes cast.

"These contentions call for a construction of section 10802, \* \* \* \* \*

"It will be noted, that, on the assembling of the mayor, the members of the council, and members of the county court, the meeting is declared organized, with the presiding judge as the presiding officer and the county clerk as clerk of the meeting. They do not meet as officers of the city or as officers of the county. They meet as one body, for the sole purpose of appointing the commissioners. Neither the city council nor the county court has any control over the public highways within the district outside of the corporate limits of the city. Such control is lodged exclusively with the board of commissioners. Section 10809, R. S. 1919.

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"The statute no more limits the mayor and members of the council to one vote than it limits the members of the county court to one vote. No doubt the lawmakers assumed the members of the meeting would be so interested in the welfare of the district that they would not permit rivalry between the county court and the city council to interfere with the honest performance of their duty. Each member of the meeting is authorized to participate in the appointment, and, absent a word in the statute to the contrary, we must hold each member of the meeting to have a vote. The statute so

remained for twenty years and until 1915, when the following proviso was added: 'Provided that where the city is located a greater distance than ten miles from the meeting place of the county court; the mayor and city council of the city or town within the road district for which commissioners are to be appointed; the mayor and members of the city council may make a written certificate of their choice of a commissioner or commissioners to be appointed, designating their first, second and third choice and seal the same and transmit it to the county clerk by mail or by special messenger; and the choice and selection designated in such certificate shall be given the same consideration as though the board and mayor were present at the meeting of the court: Provided that such certificate shall be given over the signature of the mayor or acting mayor, attested by the seal of the city and signature of the city clerk.' Laws of 1915, p. 375.

"It is clear the lawmakers by this proviso only intended to relieve the mayor and councilmen from attending the meeting if the city was located more than ten miles from the meeting place. By the proviso, the city is not authorized to make a written certificate of its choice, but the mayor and members of the council are authorized to do so. The choice designated in the certificate must be given the same consideration as though the mayor and members of the council were present. We have ruled the statute as originally enacted authorized each member of the meeting to cast a vote; and, if the choice designated in the certificate is to be given the same consideration as though a member was present and voting, then his choice designated in the certificate must be counted as a vote for commissioner. The

requirement that the first, second, and third choice be designated has reference to the first meeting after the organization of the district, when three commissioners are to be appointed. Thereafter, at a meeting for the appointment of only one commissioner, the first ballot might not result in an appointment; if so, on the second ballot the absent member's second choice could be voted, and so as to his third choice." (Under-scoring ours.)

Section 10802 R. S. Missouri, 1919, is now Section 8675 R. S. Missouri, 1939.

The court in the above case described how the meeting should be held, and that the members of the city were each entitled to a vote, and were not confined to the city casting only one vote. The court also, in the above case, in passing on the provision that the town board may send in the vote, properly certified by written certificate, of their choice for road commissioner, or road commissioners, specifically stated, "it is clear the lawmakers of this proviso only intended to relieve the mayor and councilmen from attending the meeting if the city was located more than ten miles from the meeting place."

The Supreme Court of this State has not passed directly on the method of determining the distance as is set out in Section 8675, supra. However, the Federal Court, in determining such a distance, in the case of Evans v. United States, 261 F. 902, 1. c. 904, said:

"Distance is to be measured in a straight line in a horizontal plane, unless there is a clear indication that another mode of measurement is to be adopted. 9 Am. & Eng. Encyc. of Law, p. 614. Distance is a straight line along the horizontal plane from point to point. It is measured from the nearest point of the one place to the nearest point of the other. 18 C. J. 1287."

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Under the holding in the above case, and under the unambiguous words in Section 8675, supra, it can only be construed that it refers to the distance from the place specifically named (the meeting place of the county court) to the nearest point in the city, which would be the city limits.

CONCLUSION

It is, therefore, the opinion of this department that since the city limits of the city mentioned in your request is only 9.5 miles from the meeting place of the county court, the mayor and councilmen of the city must attend the meeting, in person, for the appointment of a person for re-election as commissioner of the special road district. They cannot make a written certificate of their choice of the commissioner, or commissioners, to be appointed by transmitting it to the county clerk by mail, or by special messenger.

Respectfully submitted

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Assistant Attorney General

APPROVED:

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ROY McKITTRICK  
Attorney General of Missouri

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