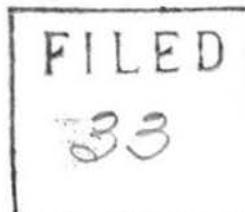


SCHOOLS: Election for annexation of school district
ELECTIONS: void where notice posted for fourteen days
instead of fifteen days required by statute.

August 16, 1949

8/23/49



Hon. James Glenn
Prosecuting Attorney
Macon County
Macon, Missouri

Dear Sir:

We have received your request for an opinion of this department, which request is as follows:

"Your opinion is requested as to the proper action to be taken by the County Clerk of Macon County, Missouri, in assessing the amount and extending tax on the general tax books. The problem concerns school tax money only and of necessity a rather full statement of the facts is necessary.

"As a result of proper petition filed with the board of school district C. D. #2 the board of directors of the district on May 30, 1949, ordered a special election for June 14, 1949. In accordance with the order the clerk posted notices but there is no doubt but that the notices were not posted earlier than May 31, 1949, which would be insufficient notice. The proposition to be voted on was 'to annex school district No. C. D. #2 to the Ethel Special School District No. 39.' The election was held on June 14, 1949, and the proposition carried by a vote of 45 for annexation and 17 against.

"On June 15, 1949, the clerk of district C. D. #2 advised the Ethel School District by letter of the results of the election. On the 20th day of June, 1949, the Board of Directors of the Ethel School District

voted to accept school district C. D. #2 into the Ethel School District.

"Prior to June 23, 1949, a taxpayer of school district C. D. #2 filed a written protest against the election for annexation with the board of directors of district C. D. #2. I have no definite information as to whether a written protest was filed with the board of the Ethel School District. No court action has been instituted to date by any parties concerned.

"On June 23, 1949, the board of directors of School District C. D. #2 met and considered the protest filed and by a vote of 4 to 2 held the election illegal and void and of no effect because of insufficient notice.

"All papers in connection with the above have been filed with the Clerk of Macon County and a plat of the Ethel School District showing school district C. D. #2 to be a part of Ethel Special School District #39. However, in applying for state aid and in estimates filed with the County Clerk, Ethel Special School District #39 did not include school district C. D. #2 nor the assessed valuation of school district C. D. #2. School district C. D. #2 has filed for state aid and an estimate has been filed with the County Clerk showing the assessed valuation in the district.

"The County Superintendent of Education has approved the application for state aid of the Ethel School District but has refused to approve any of the other estimates submitted by either district.

"The school tax rate levied in C. D. #2 is \$1.00 and in Ethel Special School District #39 is \$1.50.

"On these facts what is the proper action for the County Clerk to take in assessing the amounts and extending the general tax books?"

Section 10484, R. S. Mo. 1939, re-enacted Laws 1947, Volume I, page 507, provides for annexation of school districts as follows:

"Whenever an entire school district, or a part of a district, whether in either case it be a common school district, or a city, town or consolidated school district, which adjoins any city, town, consolidated or village school district, including districts organized and existing under the provisions of Article 18 of Chapter 72, Revised Statutes of Missouri, 1939, desires to be attached thereto for school purposes, upon the reception of a petition setting forth such fact and signed by ten qualified voters of such district, the board of directors thereof shall order a special meeting or special election for said purpose by giving notice as required by section 10418; provided, however, that after the holding of any such special election, no other such special election shall be called within a period of two years thereafter. Should a majority of the votes cast favor such annexation, the secretary shall certify the fact, with a copy of the record, to the board of said district and to the board of said city, town or village school district; whereupon the board of such city, town or village district shall meet to consider the advisability of receiving such territory, and should a majority of all the members of said board favor such annexation, the boundary lines of such city or town school district shall from that date be changed so as to include said territory, and said board shall immediately notify the clerk of said district which has been annexed, in whole or in part, of its action. In case an entire district is thus annexed, all property and money on hand thereto belonging shall immediately pass into the possession of the board of said city or town school district; but should only a part of a district be annexed thereto, said part shall relinquish all claim and title to any

part of the school property and money on hand belonging to said original district, and that portion of the district remaining must contain within its limits thirty children and thirty thousand dollars assessed valuation, or thirty children and nine square miles of territory. The voting at said special school meeting or special election shall be by ballot, as provided for in section 10467, in the case of common school districts, or as provided for in section 10483 in the case of town, city or consolidated school districts, and the ballots shall be 'for annexation' and 'against annexation,' when the whole district is to be annexed, but if only a part is to be annexed, the ballots shall read 'for release' and 'against release.'

Section 10418, R. S. Mo. 1939, referred to in the preceding section, provides:

"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. If no schoolhouse is located within the district, the place of meeting shall be designated by notices, posted in five public places within the district fifteen days previous to such annual meeting, or by notice for same length of time in all the newspapers published in the district, giving the time, place and purposes of such meeting."

The Supreme Court has explained the proper method of computing the fifteen day period under a statute similar to Section 10418 in the case of *Butler v. Bd. of Education of Consol. Sch. Dist. No. 1*, 16 S.W. (2d) 44, 1.c. 45, as follows:

"Plaintiffs next contend the voters were not given 15 days' notice of the election as required by section 11127, R. S. 1919. It is provided in section 7058, R. S. 1919, as follows: ' * * * Fourth, the time within which an act is to be done shall be computed by excluding the first day and including the

last, if the last day be Sunday it shall be excluded. * * *

"The notices were posted on March 8, 1928, and the election was held March 23, 1928. Excluding the first and including the last day gives 15 days' notice of the election. Stutz v. Cameron, 254 Mo. 340, loc. cit. 363, 162 S.W. 221. The contention is overruled."

Applying that rule in the present situation, if the notices were posted on May 31, 1949, and the election held on June 14, 1949, the period would be only fourteen days instead of the fifteen days required by the statute.

There are cases in this state which declare that failure to give notice as required by Section 10418, supra, renders void any action taken at a meeting held thereunder. State ex rel. School District of Affton v. Smith, 336 Mo. 703, 80 S.W. (2d) 858. There have, however, been no cases which have involved the exact question of whether or not failure to post notice for the time required by the section renders void action taken under such notice.

The Supreme Court, in the case of State ex rel. City of Berkeley v. Holmes, 219 S.W. (2d) 650, recently considered the question of the effect of failure to give proper notice of a special election held for the purpose of approving the issuance of municipal bonds. In that case the statute involved (Sec. 7369, R.S. Mo. 1939, amended Laws 1945, page 1301) provided that notice of a special election such as the one held should be published once a week for three consecutive weeks in a newspaper, the first publication of the notice to be made at least twenty-one days before the election. The first publication of notice of the election in question was made only nineteen days before the date of the election. The decision of the court in that case is, we feel, decisive of the question of the validity of the election here under consideration, and we quote at length from the opinion:

" * * * The rule for which relator contends is stated in the Weisgerber case (a bond election case) as follows (33 Idaho 670, 197 P. 563): 'Statutory directions as to the time and manner of giving notice of elections are mandatory upon the officers

charged with the duty of calling the election, and will be upheld strictly in a direct action instituted before an election; but after an election has been held, such statutory requirements are directory, unless it appears that the failure to give notice for the full time specified by the statute has prevented electors from giving a full and free expression of their will at the election, or unless the statute contains a further provision, the necessary effect of which is that failure to give notice for the statutory time will render the election void.' The Court cited many cases from other states in support of these conclusions. However, it recognized that 'in some jurisdictions it is held that a strict compliance with the statutory requirements as to the time of giving notice of an election is an essential prerequisite to its validity.' An example of these is *Pollard v. City of Norwalk*, 108 Conn. 145, 142 A. 807, 808, in which the Supreme Court of Connecticut held invalid bonds authorized at an election of which only 13 days notice was given when the law required 'at least two weeks.' The Court held that the provision for time of notice 'must be complied with literally' before there could be valid action, saying: 'The votes of a meeting of which notice has been given for less than the period required by the statute, though it be only for a single day, "are no more binding upon the town than if the meeting had been held without notice, or had been a mere fortuitous assembling of any portion of the inhabitants of the town."'

" * * * It is, of course, partly a question of construction of the particular statutes involved in each case. It is generally held that laws requiring notice of general elections, the time of which is fixed by law, are directory only and that their principal purpose is to remind the voters of such elections, as to which it is presumed that they know the time, place and usual purposes without additional notice. However, a

special election is a different matter; and even special questions submitted at general elections are usually held to be special elections. There is much authority that there must be compliance with provisions for time of notice of special elections and that failure to give notice for the time required by the statutes authorizing a special election invalidates it. (Citations omitted.) Some cases make a distinction on the basis of substantial compliance between the situation of no notice at all and notice for part of the required period. Apparently the only direct Missouri authorities on this question are decisions of our Courts of Appeals on special local option elections. (Citations omitted.) These cases establish the rule that strict compliance with statutory provisions for time of notice is essential to the validity of such an election.

* * * * *

"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. State ex rel. Mercer County v. Gordon, 242 Mo. 615, 147 S.W. 795; State ex rel. City of Memphis v. Hackman, 273 Mo. 670, 202 S.W. 7. However, when time requirements are so specifically stated as those in Section 7369, it seems to us that calling anything less substantial performance would amount to judicially amending the statute. * * *"
(Underscoring ours.)

We are of the opinion, therefore, that if the facts are as stated in your letter, to wit, that the notice was not posted until May 31 for an election held on June 14, under the foregoing decision of the Supreme Court the election is void.

You do not state whether or not the record filed with the county clerk contains any reference to the date of posting of the notice. However, both school districts involved in their estimates have ignored the results of the election. The county clerk is authorized to extend the taxes for school purposes only upon receipt of the estimates of the various districts. Section 10395, R. S. Mo. 1939, re-enacted Laws 1945, page 1629. The Ethel School District in its estimate has not included School District C. D. #2, and School District C. D. #2 has filed its separate estimate. Since the county clerk is authorized to act only on the basis of estimates filed with him, he should extend the taxes for the Ethel Special School District and for School District C. D. #2 separately, at the rates authorized for the respective districts.

Conclusion.

Therefore, it is the opinion of this department that where an election on the question of annexation of a school district is held after posting of notice thereof for fourteen days instead of for the fifteen days required by Section 10418, R. S. Mo. 1939, the election held under such notice is void, and the county clerk should extend the taxes for the districts involved in accordance with the estimates of said districts filed with him without regard to the attempted annexation.

Respectfully submitted,

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Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

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