

BALLOTS: 1) A county commission is not
COUNTIES: authorized to conduct an
COUNTY ELECTIONS: advisory election on the
COUNTY JAIL: question of whether the
ELECTION BALLOTS: county jail should be
ELECTIONS: expanded and public funds
JAILS: expended for the construction
of an addition to the county
jail, and 2) if such an election has been held, its result is
not binding on the county commission.

August 5, 1991

OPINION NO. 129-91

Terry R. Rottler
Ste. Genevieve County Prosecuting Attorney
296 Market Street
Ste. Genevieve, Missouri 63670

Dear Mr. Rottler:

This opinion is in response to your questions asking:

Can a county government conduct an advisory election submitting to the voters of the county a question of whether the county jail should be expanded and public funds expended for the construction of an addition to said structure?

If such an election has been conducted, what impact, if any, do the results have on the decision making authority of the county commission and county government regarding this particular issue?

Enclosed herein is a copy of Missouri Attorney General Opinion No. 478, Weier, 1969; a copy of Missouri Attorney General Opinion Letter No. 111, Harper, 1978; a copy of Missouri Attorney General Opinion No. 204-87; and a copy of Missouri Attorney General Opinion No. 85-91. As discussed in these opinions, the county commission can only place a proposition on the ballot when so authorized by law. A review of the applicable statutes does not reveal any law authorizing a county commission to call an advisory election submitting to the voters

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of the county a question of whether the county jail should be expanded and public funds expended for the construction of an addition to said structure. Therefore, the county commission is not authorized to conduct such an advisory election.

When a county commission acts without authority, the action taken can be declared void by the courts. See American Aberdeen Angus v. Stanton, 762 S.W.2d 501, 503 (Mo. App. 1988); Lancaster v. County of Atchison, 180 S.W.2d 706, 708 (Mo. banc 1944). We have found no Missouri authorities addressing the effects of an election as described in your question. However, we note that even in an instance where such an advisory election is authorized by law, the result has been held to be directory, not mandatory. See City of Litchfield v. Hart, 306 Ill. App. 621, 29 N.E.2d 678, 679 (1940). Therefore, if such an election as discussed in your question has been held, the result is not binding on the county commission.

CONCLUSION

It is the opinion of this office that: 1) a county commission is not authorized to conduct an advisory election on the question of whether the county jail should be expanded and public funds expended for the construction of an addition to the county jail, and 2) if such an election has been held, its result is not binding on the county commission.

Very truly yours,


WILLIAM L. WEBSTER
Attorney General

Opinions: Opinion No. 478, Weier, 1969
Opinion Letter No. 111, Harper, 1978
Opinion No. 204-87
Opinion No. 85-91