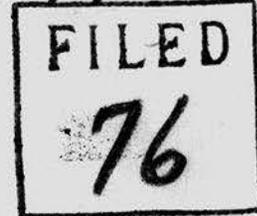


SPECIAL ELECTIONS:
SECTION 262.500, RSMo 1949:
DUTY OF COUNTY COURT:

County court required to file and consider petition requesting special election authorized by Section 262.500. Even though petition is signed by statutory number of qualified voters, court's duty is to refuse to call election since county has already reached maximum tax rate for county purposes fixed by Art. X, Sec. 11(b), Const. of 1945, and court is prohibited from calling the election under Section 262.500, supra.

October 19, 1951

Honorable Lawson Romjue
Prosecuting Attorney of
Macon County
Macon, Missouri



Dear Sir:

This is to acknowledge receipt of your recent request for a legal opinion of this department which reads as follows:

"The County Court of Macon County has directed me to request your opinion under the provisions of Sections 262.290--262.540 and especially 262.500 Revised Statutes of Missouri, 1949, upon the questions hereinafter set out.

"In so far as the facts appear to be pertinent the full constitutional limit has been levied in Macon County for county purposes for the last five years and probably longer and it will undoubtedly be necessary to continue the levy in the constitutional limit.

"A copy of the petition which is being circulated is enclosed.

"Question: 1. Under the statutory provisions above is the County Court required to accept a petition in the form enclosed bearing the

Honorable Romjue

required number of qualified signatures. 2.
If the answer to question one is in the affirmative, is the County Court required to call the election contemplated by the Statutes."

Reference is made in your letter to Sections 262.290, 262.540, and especially 262.500, RSMo 1949, but since the latter section is the one which applies to the facts and the matter of inquiry, we believe it sufficient to quote a part only of that section, as follows:

"In all counties of this state in which the constitutional limit is not levied for county purposes, it shall be the duty of the county court, upon the filing of a petition signed by not less than three hundred resident taxpayers and qualified electors of such county, to call an election to submit to the qualified voters thereof, a special levy of not more than two mills on the dollar valuation, which levy, together with all other levies for county purposes, shall not exceed the constitutional limit of levy for the county affected, for the purpose of encouraging, promoting and improving the livestock, poultry, agricultural, horticultural, mechanical fabrics and fine arts, products and articles of domestic industry, and the exhibition of such stock, poultry articles and commodities, at the district or county fair held in such county."

We understand question one, to inquire if it is the duty of your county court, when presented with a petition in the enclosed form, and containing the required number of signatures provided by the statutes referred to above, to file the petition and give further consideration as to whether or not it will call the special election requested in said petition.

The petition is addressed to the Honorable County Court of Macon County, Missouri, and the body of said petition reads as follows:

"We, the undersigned resident taxpayers and qualified electors of Macon County, Missouri, hereby petition your Honorable Court to call an election to submit to the qualified voters of Macon County, Missouri, a proposition authorizing the special levy of a tax of not more than

Honorable Romjue

two mills on the dollar valuation on all property subject to the taxing powers of your court for the purpose of encouraging, promoting, and improving the livestock, poultry, agricultural, mechanical fabrics and fine arts, products and articles of domestic industry, and the exhibition of such stock, poultry, articles and commodities, at the county fairs held in Macon County, Missouri, as provided for in Section 262.500, Revised Statutes of Missouri, 1949."

The petition is informally drawn under section 262.500, and upon a comparison of it with the provisions of said section it appears that the language of the petition is sufficiently clear to inform the court of the facts upon which the request for a special election to be called by the court is based and that it states a prima facie case for the consideration of the court. The statute places no limitation upon the filing of petitions under such circumstances, and it is our thought that the court must file the petition and give due consideration to the request made therein, therefore our answer to question one, is in the affirmative.

Question two, inquires that if the answer to question one is in the affirmative, is the county court required to call the election contemplated by the statutes. In other words, upon the filing of the petition is it the mandatory duty of the county court to call the election, or is the court allowed any discretion in the matter.

It appears that the duty of the court is to determine first, whether or not the petition is sufficient under the statute, and second, whether the allegations of the petition are supported by sufficient evidence to justify the court in calling the election. Such duties are not altogether ministerial in character, but require the discretion of the court in the matter.

As authority for our contention, we cite the case of State of Missouri ex rel. v. Judges of County Court of Taney County, 240 Mo. App. 99. In this case mandamus was requested to compel the county court to submit the question of the removal of a county seat to the voters in a special election. The court had refused to call the election and it was alleged that the court had acted arbitrarily in finding that the petition for submission of the proposition did not contain a sufficient number of names.

Honorable Romjue

At l. c. 104, 105, and 106, the court said:

"Section 13732 provides that whenever one-fourth of the voters of any county shall petition the county court for a removal of the seat of justice of such county to any other place, the court shall make an order directing that the proposition to remove said seat of justice, named in the petition, be submitted to the voters at the next general election and shall give proper notice thereof as required by the statute. The first step, before the county court is authorized to call the election, is the filing of a proper petition, that is, one that is signed by more than one-fourth of the voters of the county. It is only upon the filing of this proper petition that the county court can legally make the order submitting the matter to the voters at the general election. The question is, whose duty is it to pass upon the sufficiency of the petition? Certainly, it must be that of the county court. They must first ascertain whether they have the right to make the order submitting the proposition. The question of whether or not a proper petition has been presented to them is a matter of which they have absolute and sole jurisdiction. In passing upon the question they must exercise their discretion. State ex rel. Heller vs. Thornhill, 174 Mo. App. 469, 160 S. W. 558. State ex rel. Bismark Grill vs. Kiernan, 238 Mo. App. 507, 181 S.W. (2d) 798. The order made by it, and set out in relators' petition, in haec verba, indicates that it has done so. It permitted the filing of the petition. It was on file for several months. The case was called up for hearing, the petition was read, respondents became familiar with the provisions. The record recites that it heard evidence thereon and was fully advised in the premises and then it found that 'the said petition did not obtain (contain) sufficient number of names.' The petition was therefore rejected. No order was made specifically refusing to place the proposition on

the ballots.

"In the petition of relators and in the writ, it is alleged that respondents acted arbitrarily, unreasonably, and capriciously. This allegation is a mere conclusion. * * *

"Here, there is no such supporting statement of facts. On the contrary, the order of the county court is pleaded, which, instead of showing arbitrary and capricious action on the part of the court, shows that they followed an orderly and legal procedure.

"What relators really ask this court to do is to direct the county court of Taney County to make an order submitting the question to the voters, although the jurisdictional petition has been found insufficient. If relators' prayer should be construed to mean that we are asked to direct the county court to make an order holding the petition sufficient, we have no such authority because it is universally held that while we may by mandamus compel an inferior tribunal to act judicially or to perform a ministerial act, that we have no authority to control its decision on a discretionary matter or tell it how a question should be decided, or require it to decide such question in a particular way. State ex rel. Brown vs. Stiff, 104 Mo. App. 685, 78 S. W. 675. State ex rel. Folkers vs. Welsch, 235 Mo. App. 15, 124 S.W. (2) 636. State ex rel. Rice vs. Thompson et al. (Mo. App.); 203 S. W. (2d) 881. Baker vs. Tener (Mo. App.), 112 S. W. (2d) 351. State ex rel. Hutton v. Scott Co. Ct. (Mo.), 197 S. W. 347. State ex rel. Howe vs. Hughes, 123 S. W. (2d) 105, 343 Mo. 827."

In the event the court finds the allegations of the petition and the evidence offered in support thereof sufficient under the provisions of section 262.500, supra, the court has no further discretion in the matter but must call the special election as requested. A failure of the court to perform this duty after having made such finding is legally inexcusable, and such court might be forced to do so by mandamus. However, in such instance the court has power to call said election only when all the statutory conditions have been met.

Honorable Romjue

In this connection it appears that a question may arise as to what finding the court must make in regard to the facts, before it is authorized to call the special election.

Section 262.500, supra, begins with the words "in all counties of this state in which the constitutional limit is not levied for county purposes, it shall be the duty of the county court * * *."

The constitutional limit referred to is that found in the Constitution of Missouri, 1945, Article X, Section 11(b), which reads in part as follows:

"Any tax imposed upon such property by municipalities, counties, or school districts, for their respective purposes, shall not exceed the following annual rates

* * * * *

"For county purposes - thirty-five cents on the hundred dollars assessed valuation in counties having three hundred million, or more, assessed valuation, and fifty cents on the hundred dollars assessed valuation in all other counties."

The first requirement then of the statute (which only applies to the counties referred to) is that the court must find that the constitutional limit of the tax rate for county purposes has not been reached.

Upon referring to the Roster of State, District and County Officers of Missouri, for 1951 and 1952, as compiled and distributed by the Honorable Walter H. Toberman, Secretary of State of Missouri, it appears that Macon County had an assessed valuation for 1951, of \$22,738,979.

The opinion request states that the constitutional tax limit for the past five years in Macon County has been reached, and that it will undoubtedly be necessary to continue this rate for some time in the future. Incidentally, the tax rate for county purposes under the above constitutional limit is fifty cents on the one-hundred dollars assessed valuation, for Macon County.

The second requirement of the statute is that a petition must be presented to the court requesting them to call the election and that such petition must contain not less than three hundred signatures of resident taxpayers and qualified voters of the county.

Honorable Romjue

The opinion intimates that the petition in the instant case contains the required number of signers, and it appears that the petition complies with the statutory requirements in this particular.

A third requirement of the statute is that in the event the court finds the petition sufficient, and does call the special election as requested, it shall specify the amount of tax levy found to be necessary, (not exceeding two mills on the dollar valuation) which levy shall be set out in the proposition submitted to the voters of the county, and that such levy, together with all other levies for county purposes shall not exceed the constitutional limit of levy for county purposes.

Although the petition presented to the county court of Macon County, has been signed by the statutory number of qualified electors of the county, as provided by section 262.500, supra, it is our thought that said county court is not required to call the special election requested by the petitioners, but that it is the duty of the court to refuse to call the election and dismiss the petition. As stated above a county court has the power under section 262.500, to call an election of the nature therein specified, only when all the conditions of the statute have been met. In view of these circumstances, the county court lacks the power and cannot legally call the special election as requested.

CONCLUSION

It is the opinion of this department that when a petition drawn under Section 262.500, RSMo 1949, and signed by three hundred resident taxpayers and qualified electors of Macon County, Missouri, requesting the county court of said county to call a special election to submit to the qualified voters of Macon County, the proposition authorizing a special tax levy of not more than two mills on the dollar valuation for the purposes of encouraging, promoting, and improving livestock, poultry, agricultural, mechanical fabrics and fine arts, products and articles of domestic industry, and exhibits of such stock, poultry, articles and commodities at county fairs held in Macon County, as provided by said section, is presented to the county court of such county, it shall be the duty of the court to file said petition and give due consideration to the request made therein, and that thereafter it shall be the duty of the court to refuse to call said election and to dismiss the petition if the constitutional limit of the levy of taxes for county purposes as

Honorable Romjue

provided by Article X, Section 11(b), Constitution of Missouri, 1945, has been levied in Macon County.

Respectfully submitted,

PAUL N. CHITWOOD
Assistant Attorney General

APPROVED:



J. E. TAYLOR
Attorney General

PNC:hr