

County Seat, Removal of

Petition to move County Seat and petition to increase tax to build new court house must be separate petitions.



January 2nd, 1935.

Mr. William Short,
County Treasurer,
Huntsville, Missouri.

Dear Sir:-

We have your letter of November 26, 1934 in which is contained a request for an opinion as follows:

"We are figuring on moving the County Seat to Moberly and building a new Court House there as this one in Huntsville is falling down by degrees and I would like to know what procedure to take in this matter. Do we have to get a petition to the County Court to move the County Seat and then another one to the County Court to build a court house and separate elections on both, or can we get a petition to and the required number on it to call an election to build a court house in Moberly and that would automatically move the County Seat. If we have to have separate petitions for each how many signers would we have to have to present it to the court to call an election and how many would we have to have to carry either or both of them at the polls.

"Hoping this is not asking too much of you and I do not cause you too much trouble looking this up but this has to be did sooner or later to be safe to work in, and I was asked by several interested in it to write you for the information.

"Hoping to hear from you soon with the information desired by the taxpayers of this County for the safety of the public in general that come in and out of the court house day in and day out."

Article 4 of Chapter 85, sections 12043-12104 incl., Revised Statutes of Missouri, 1929, sets forth the law and procedure with reference to the removal of a county seat and the construction of a new court house.

Section 12073 et seq., Revised Statutes of Missouri, 1929, provides that one fourth of the voters in a county may petition the county court for an order submitting the proposition of removal to

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the voters at the next general election. For adoption of the proposition, under section 12075 of the Statutes, and also under section 2, article 9 of the Constitution of Missouri, two thirds of the qualified voters of the county, voting on the proposition, must vote in favor thereof.

With regard to the petition for the erection of a new court house, we presume you refer to a petition for an order submitting to an election the question of increased taxation for the purpose of erecting a court house.

Sections 12093 to 12103, Revised Statutes of Missouri, 1929, seem to cover increase of taxation for the erection of public buildings generally. Section 12104, Revised Statutes of Missouri, 1929, however, expressly applies to the erection of a court house, hence we refer you to the latter section.

By section 12104 mentioned above it is provided that the county court of its own motion may, or, upon petition signed by not less than one hundred resident taxpayers, shall order that an election be held within forty-five days thereafter to determine whether or not the rate of taxation shall be increased for the purpose of erecting a court house. Certain conditions and the form of ballot are then set out. Two thirds of the qualified voters voting at such election are necessary for adoption.

From the above it will be seen that the procedures for removal of the county seat and for the erection of a court house are markedly different. For instance, the removal proposition must be submitted at a general election; not so in the case of the other proposition. In addition, where removal is sought one-fourth of all the voters in a county must sign the petition; while in the other situation the county court may of its own motion order the election, or if it will not act, only one hundred resident taxpayers must sign the petition which will require action.

It seems fairly obvious, therefore, that the legislative intent was to keep the two procedures distinct and separate. With the foregoing in mind we are of the opinion that both procedures must be separately followed.

Very truly yours,

CMHJr:LC

CHAS. M. HOWELL, Jr.
Assistant Attorney General

APPROVED:

Attorney General