

ELECTIONS:

HOLIDAYS:

Special referendum election to be held April 4, 1950 is not a "public holiday" within the meaning of Section 15310 R.S. Mo. 1939.

March 29, 1950.

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Mr. A. E. McInerney,  
State Grain Warehouse Commissioner,  
1108 Board of Trade Building,  
Kansas City, Missouri.

Dear Sir:

This is in answer to your letter of recent date requesting an official opinion of this department and reading as follows:

"Is the date of April 4, 1950, the date upon which the special referendum election is to be held, a public holiday?"

Section 15310 R.S. Mo. 1939 provides as follows:

"The following days, namely: the first day of January, the twenty-second day of February, the thirtieth day of May, the fourth day of July, the first Monday in September, the eleventh day of November, any general primary election day, any general state election day, any thanksgiving day appointed by the president of the United States or by the governor of this state, and the twenty-fifth of December, are hereby declared and established public holidays; and when any of such holidays falls upon Sunday, the Monday next following shall be considered such holiday."

The statute above set out, insofar as it is significant here, provides that any general state election day shall be a public holiday.

In order to determine the meaning of a general state election we turn to Section No. 655 R.S. Mo. 1939, which sets out additional rules for the construction and meaning of statutes

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and certain words or phrases used therein.

Section No. 655 provides in part as follows:

" \* \* \* the term 'general election' refers to the election required to be held on the Tuesday succeeding the first Monday of November, biennially; \* \* \* "

In the case of State v. Searcy 39 Mo. App. 393, l.c. 405, the St. Louis Court of Appeals stated as follows:

"It is next objected that, whereas, according to the law in force at the time when this election was ordered and held, a general school election in all the counties of the state was required to be held on the first Tuesday in April, which was the second day of that month, and whereas the election ordered by the county court on the question of local option was held on the eleventh of February, which was within sixty days of the election of school directors, the election on the question of local option was void under the terms of the statute. The provision of the statute relating to elections on the question of local option outside of the corporate limits of any city or town are 'that no such election, held under the provisions of this act, shall take place on any general election day, or within sixty days of any general election held under the constitution and laws of this state, so that elections as are held under this act shall be special elections, and shall be separate and distinct from any other election whatever.' The Revised Statutes of 1879 contain this general provision: 'The construction of all statutes of this state shall be by the following additional rules, unless such construction be plainly repugnant to the intent of the legislature, or of the context of the same statute. \* \* \* Sixteenth, the term "general election" refers to the election required to be held on the Tuesday succeeding the first Monday of November biennially.' R.S. 1879, section 3126. This shows that the school election required to be held in April was not a 'general election,' within the meaning of the local option statute, and this disposes of this assignment of error."

Similarly, in Haas v. City of Neosho, 139 Mo. App. 293,

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the Springfield Court of Appeals held as follows, l.c. 296:

"\* \* \* It will be proper to consider these two sections together in determining this question. The first reads as follows: 'No election held under the provisions of this article shall take place on any general election day or within sixty days of any general election held under the constitution and laws of this State, so that elections as are held under this article, shall be special elections, and shall be separate and distinct from any other elections whatever.' The latter reads: 'Such elections shall not be held within sixty days of any municipal or State election held in such city, and shall be conducted and returns thereof made and the result thereof ascertained and determined in accordance, in all respects with the laws and ordinances governing municipal elections in such city.

"In section 4160, Revised Statutes 1899, it is provided as follows: 'The term "general election" refers to the election required to be held on Tuesday succeeding the first Monday in November.' The St. Louis Court of Appeals, in *State v. Searcy*, 39 Mo. App. 393, held that the general election proviso in section 3027, only applied to the November election, and the same court in *Dooley v. Jackson*, 104 Mo. App. 21, declared that the word 'elections' used in a similar statute, do not include primary elections. These cases are cited with approval by the Supreme Court in the recent case of *State ex rel. Van Stade v. Taylor*, 119 S.W. 373."

In *Greenwood v. City of El Paso* 186 S.W. (2d) 1015, the meaning of "general election" is discussed as follows, l.c. 1015:

"The words 'general election' popularly, and by themselves, mean the state-wide election held pursuant to general law every two years for selection of state, district, county and precinct officers."

It is therefore, manifest that the special referendum election on April 4, 1950, is not a general election. That it was the intention of the Legislature that such elections as that of April 4, 1950 were not to be public holidays is made clear by the wording of Section 15310, supra, in which provision is made for a public holi-

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day on the date of the state-wide primary elections. If the Legislature had intended that the term "general state elections" should include all state-wide elections, certainly there would have been no necessity for the specific provision regarding the primary. This latter fact is of particular importance here, for it is a well-known rule of statutory construction that the expression of one thing (primary elections) is the exclusion of another (other state-wide elections). *Crevisour v. Hendrix* 136 S.W. (2d) 404. That we must, in construing Section 15310 give to the term "general state elections" its ordinary and usual meaning is emphasized in *State v. Platner* 283 Mo. 508 as follows:

"The Court cannot assume that the Legislature, in the use of a word in the enactment, intended to give it a meaning radically different from that ordinarily attached, without some explanation of such intention; \* \* \* "

Or as was stated in *Lansdown v. Farris* 66 F. (2d) 939:

"In examining the language of statutes, the courts must take words in their common meaning."

To sum up then, Section 655 R.S. Mo. 1939, as well as the several cases heretofore cited, have made it too clear for further discussion that the term "general election" means in this State, the election held on the Tuesday succeeding the first Monday of November, biennially. It also seems apparent that, if the Legislature had intended that all state-wide elections should be public holidays, it would have been unnecessary to specifically single out the state-wide primaries. Further, it would appear that the normal and intended meaning of "general state election" is simply the general election as defined in Section 655, supra. To attach any other meaning to the use of the word "state" is to twist and obscure the plain and evident purpose of Section 15310 and to ignore sound and established rules of statutory construction.

#### CONCLUSION

It is, therefore, the opinion of this office that the

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referendum election to be held in Missouri April 4, 1950, is not a public holiday.

Respectfully,

H. JACKSON DANIEL,  
Assistant Attorney General.

APPROVED:

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J. E. TAYLOR,  
Attorney General.

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