

SCHOOLS:
ELECTION:

Proponents and opponents of school
bond issue under Section 165.040,
RSMo 1949, not entitled to challengers
and checkers at election on said bonds.

February 19, 1953

FILED 20

Honorable Robert E. Crist
Prosecuting Attorney
Shelby County
Shelbyville, Missouri



Dear Sir:

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

"Please advise if the opponents and
proponents of a bond issue, which is
held in pursuance to Section 165.040,
Missouri Revised Statutes, 1949, are
entitled to challengers and checkers
at the election."

Section 165.040, RSMo 1949, provides, in part:

"1. For the purpose of purchasing
schoolhouse sites, erecting school-
houses, library buildings and furnishing
the same, and building additions
to or repairing old buildings, the
board of directors shall be authorized
to borrow money, and issue bonds for
the payment thereof, in the manner
herein provided. The question of
loan shall be decided at an annual
school meeting or at a special election
to be held for that purpose. Notice
of said election shall be given at
least fifteen days before the same
shall be held, by at least five written

or printed notices, posted in five public places in the school district where said election shall be held, and the amount of the loan required, and for what purposes; it shall be the duty of the clerk to sign and post said notices. The qualified voters at said election shall vote by ballot. Those voting in favor of the loan shall have written or printed on their tickets, 'For the loan;' those voting against the loan, the words 'Against the loan,' and if two-thirds of the votes cast on the proposition shall be for the loan, the district board shall be vested with the power to borrow money, in the name of the district, to the amount and for the purpose specified in the notices aforesaid, subject to the restrictions of section 165.043."

Section 111.010, RSMo 1949, provides:

"The provisions of this chapter shall apply to all the election precincts in this state but shall not apply to township or village elections, to school elections, or to any city election in cities of the fourth class, or in cities of under three thousand inhabitants existing under any special law."

Section 111.290, RSMo 1949, provides:

"In all counties in this state in which a special election shall be held for the purpose of voting upon any proposition to issue bonds for any purpose, which, under the law, must be submitted to the vote of the qualified electors for determination, two judges and two clerks of such election shall be appointed by the county court for each special election precinct; provided, that the provisions of this law shall not apply when any such proposition is submitted to be voted upon at a regular primary election or a general election."

Section 111.300, RSMo 1949, provides:

"Such special election, except as provided in section 111.290, shall, as near as possible, be conducted in the same manner, and be governed by the same laws, as a general election."

In the case of Robinson v. Wiese, 210 S.W. 889, the court stated (210 S.W. 1.c. 892):

"The appellants contend that the election which authorized the issue of the bonds in question was not lawfully held, because the judges and clerks were appointed by the board of directors of the district, while the law required their appointment by the county court, under the provisions of the act 'providing for the appointment by county courts of judges and clerks for special elections, and for the making by county courts of special election precincts, and further providing for the repeal of inconsistent acts, with an emergency clause.' Laws 1913, p. 326.

"We see nothing in the act which tends to sustain this view. Its title implies that it is applicable to those municipalities in which elections are held in precincts established by the county courts. This first section indicates plainly that it is intended to apply to special elections where regular primary elections or general elections are held, while section 4 states its object to be to avoid the expense of six judges and six clerks at each precinct. It has no reference whatever to any part of the machinery for holding general or special school meetings by section 10879 of the Revised Statutes of 1909. (Section 164.330, RSMo 1949). The board was right in their exact compliance with the terms of that section.

Under the holding of the court in this case, the general election laws do not apply to school bond elections. Inasmuch as there is no provision in the school election laws giving proponents and opponents of a school bond issue the right to have challengers and checkers, no such right exists. The question of right to be present at the polling place and at the counting of the ballots is governed solely by statute. 29 C.J.S. Elections, Section 200, p. 285.

Even though the general election laws might be held, in some respects, to be applicable to school elections, we feel that they would not entitle challengers and checkers to be present at special school bond elections. We find no authorization for the appointment of challengers in general elections, other than in counties having a population of between 200,000 and 450,000 inhabitants (Section 113.200, RSMo 1949), counties having a population of more than 450,000 (Section 113.870, RSMo 1949), cities of population between 300,000 and 700,000 (Section 117.590, RSMo 1949,) and cities of populations over 600,000 (Section 118.510, RSMo 1949). Shelby county, having a population of 9,730 by the last decennial census, does not come within such statutes.

Section 120.480, RSMo 1949, provides:

"The county, ward or township committeeman of each party in each county may appoint two party agents or representatives, with alternates for each, who may represent his party at the polling place in each precinct during the casting, canvass and return of the vote at a primary, who shall act as challengers and witnesses to the count of the vote for their respective parties and who shall have the power prescribed by law."

This section by its terms, applies only to primary elections and operates through party committees.

Section 111.610, RSMo 1949, applicable generally to conduct of elections, provides, in part:

"No person or persons shall be admitted into the room or office when such ballots are being counted, except the judges and clerks of elections: provided, that any political party may select a representative man who may be admitted as a witness of such counting."

The purpose of this section is obvious. Machinery exists, in the form of legally recognized political organizations, for the selection of such witnesses. Such situation does not exist with regard to special school bond elections. Certainly there would be no object in the appointment of witnesses by political committees. Organizations formed to foster or oppose a bond issue have no legal basis and any attempt to recognize them would lead to complete confusion.

In the case of Easton City Election Overseers, 12 Pa. Dist. 526, the question presented was whether or not watchers should be appointed for a city bond election. The general election law called for the appointment of watchers who should be members of different political parties. The court refused to order the appointment, stating:

"If these statutes were applicable to an election in the city to determine whether there should be an increase of indebtedness, then the Act of 1874, if not repealed, would be complied with when the court should appoint in each district one Republican and one Democrat, both of whom were in favor of the increase of debt. This would be incongruous.

"If the appointments now petitioned for can be required, we give to the expression 'different political parties' a meaning which extends it to embrace those who are supposed to have opposing views upon the subject matter of the special election.

"Political parties are separate organizations well understood as objects of

discriminating legislation, but
it is impossible to reach similar
results in individual classification."

The reasoning of the court in that case is clearly
applicable in the operation of our election laws.

CONCLUSION

Therefore, this department is of the opinion that
proponents and opponents of a special school bond issue,
to be voted upon under Section 165.040, RSMo 1949, are
not entitled to challengers and checkers at the election
to authorize such bonds.

This opinion, which I hereby approve, was prepared
by my Assistant, Mr. Robert R. Welborn.

Yours very truly,

JOHN M. DALTON
Attorney General

RRW:lw/cs