

STOCK LAW: Proposition to invoke stock law by entire county under  
ELECTIONS: Sec. 270.090, RSMo 1949, requires merely a majority of  
TOWNSHIPS: the voters voting on the proposition. Where proposition  
VOTING: to enforce stock law carries at county-wide election,  
the stock law is in effect county wide in spite of fact  
that identical proposition submitted simultaneously at  
separate township election was defeated in some of the  
townships.



January 19, 1955

Honorable J. B. Schnapp  
Prosecuting Attorney  
Madison County  
Fredericktown, Missouri

Dear Mr. Schnapp:

This is in response to your letter dated December 10, 1954,  
which reads as follows:

"I have a copy of your opinion of November 11, 1954, addressed to the Honorable W. R. J. Hughes of Ironton, Missouri concerning Stock Law Elections under Section 270.130 RSMo 1949 wherein the opinion of your office is that if the proposition does not carry unless voted by a majority of the qualified voters of the townships who cast their vote in the General Election as distinguished by the qualified voters of such township who vote only on the proposition as submitted at such general election.

"In this County we had an election under Section 270.110 for a county wide stock law. There was over 4000 votes cast at the election, with 1846 votes being for the stock law and 970 votes against the stock law. I am wondering whether or not it takes a majority under Section 270.110 providing for a county election, of the qualified voters who cast their vote at the election, as distinguished from the majority of the voters who voted only on the proposition of the stock law.

"I do believe that there is a difference between Section 270.110 and Section 270.130 in the wording of the two statutes and it is

Honorable J. B. Schnapp

my humble opinion that it merely takes a majority of those who voted on the proposition under Section 270.110.

"Your advice and opinion on this matter will be deeply appreciated.

"There is another question which arose in connection with the same election. In several of the townships there was a separate election for the enactment of a stock law in those townships. This was held at the same time at which the county-wide election was held. In several of these townships the proposition was defeated, but carried county wide. Now, the question is, whether or not in those particular townships which defeated the stock law, is the stock law in effect because the proposition did carry on a county-wide basis. Again, my humble opinion, I believe that since the election did carry on a county-wide basis, that we do have a valid stock law for the whole county even though separate townships did reject the stock law in the township election. Again, your opinion will be appreciated on this question."

Your first question is whether a county-wide vote on the stock law under Section 270.080-110, RSMo 1949, requires a majority of those voting on the proposition or a majority of the total votes cast at the election in order to effect the adoption of the proposition.

In that connection we direct your attention first to Section 270.080, RSMo 1949, which reads as follows:

"The provisions of this chapter are hereby suspended in the several counties in this state, until a majority of the legal voters of any county voting at any general or special election called for that purpose shall decide to enforce the same in such county; provided, that only a majority of the legal voters voting on said question shall be necessary to decide its adoption or rejection."

Honorable J. B. Schnapp

Since the total of the votes cast on the proposition was 2,816 and 1,846 voted for the stock law, which is a majority of the votes cast on the question, the proposition carried in favor of enforcing the stock law.

We also direct your attention to the quotation from State ex rel. v. Wilson, 129 Mo. App. 242, 246, 108 S.W. 128, found on page 3 of the opinion of November 11, 1954, directed to Honorable W. R. J. Hughes, which is as follows:

" \* \* \* it is evident that the Legislature intended to require more to adopt the stock law by townships than by counties, that is, it may be adopted in a county by a majority of the qualified voters who vote on the proposition, but in order to adopt it in five townships, there must be in favor of the proposition a majority of the voters voting at the election. It appears by the return to the writ of certiorari in this case that the vote on the proposition was taken at the general election held November 8, 1906, and that there were polled at such election 2,030 votes, of which 903 voted in favor of the proposition. This not being a majority of the voters voting at such election, the law was not adopted'."

(Emphasis ours.)

As we understand it, at the same time that this county-wide election was held a separate election was held in several of the townships in the county at which the same question was submitted. In several of those townships the proposition carried, but in others it was defeated. The question now is which prevails, the county-wide election or the separate elections in the various townships.

Although the statutes provide both for a county-wide election and an election in two or more townships (Sec. 270.130, RSMo 1949), we believe that the elections held in the separate townships at the same time that the county-wide election was held were superfluous under the circumstances inasmuch as the same question was presented in both elections and the proposition carried county wide. The county-wide election must be held to control every township in the county or it would not be a county election. The mere defeat of the proposition in individual townships under the county-wide election could not operate to relieve

Honorable J. B. Schnapp

those townships of the effect of the county-wide election. Nor do we see how the defeat of the same proposition submitted separately in individual townships could do so. The county-wide election must be held to be controlling and the stock law in effect county wide at this time.

If individual townships desire to permit animals to run at large in spite of the fact that the county has voted to restrain animals from running at large, such is provided for in the proviso clause of Section 270.130, RSMo 1949, which reads as follows:

"provided, however, that nothing in this section or chapter shall be construed to prevent the petitioning for and holding of an election to permit animals to run at large in any township or townships that have voted to restrain said animals from running at large, notwithstanding the county or township has theretofore voted to restrain animals from running at large."

See State ex rel. McMonigle et al. v. Spears et al., 358 Mo. 23, 213 S.W. (2d) 210.

#### CONCLUSION

It is the opinion of this office that a proposition to enforce the provisions of Chapter 270, RSMo 1949, the stock law, at a county-wide election is adopted by the affirmative vote of a majority of the legal voters voting on said question.

It is the further opinion of this office that when a proposition to enforce the provisions of Chapter 270, RSMo 1949, is submitted at a county-wide election and carried by a majority of the legal voters voting thereon and at the same time the identical proposition is submitted separately in township elections, the stock law is in effect county wide in spite of the fact that the proposition was defeated in individual townships.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, John W. English.

Yours very truly,

JOHN M. DALTON  
Attorney General

JWI:ml