

SCHOOLS: Requirement of separate polling place  
SCHOOL DISTRICTS: in each incorporated city or town in  
ELECTIONS: school district mandatory before election.



March 24, 1955

Honorable Wayne W. Waldo  
Prosecuting Attorney  
Pulaski County  
Waynesville, Missouri

Dear Mr. Waldo:

This is in response to your request for an opinion dated March 15, 1955, which reads as follows:

"The opinion of the Attorney General is respectfully requested on the following situation:

Waynesville Reorganized School District R-4 is a school district in Pulaski County, Missouri. Pulaski County, Missouri is a county of the 4th Class. The City of Waynesville, Missouri is a city of the 4th Class and it is located in said school district. In November of 1954, St. Robert, Missouri was incorporated as a city of the 4th Class. It borders the City of Waynesville, Missouri and St. Robert is also located within Waynesville Reorganized School District R-4. Both the City of Waynesville and the City of St. Robert have less than 2,000 inhabitants, according to the 1950 Census.

Section 165.330, Missouri Revised Statutes 1949 provides 'That if there shall be any other incorporated city or town included in such school district, there shall be at least one polling place within such other incorporated city or town.' Under Section 165.330, R.S. Mo. 1949, is the

Honorable Wayne W. Waldo:

Board of Directors of the Waynesville School District required to provide a polling place within the City of St. Robert, Missouri? In other words, is the above quoted Section mandatory or merely directory? In this respect the attention of the Attorney General is called to the Case of State v. Brown, 33 S.W. (2d) 104, l.c. 107, and State v. Schade, 167 S.W. (2d) 135, l.c. 141.

"It is requested that this opinion be expedited as much as possible so that the Board of Directors can prepare for the election on April 5, 1955."

The section of the statutes referred to in your opinion request, Section 165.330, MoRS, Cum. Supp. 1953, reads, in part, as follows:

"1. The qualified voters of such town, city or consolidated school district shall vote by ballot upon all questions provided by law for submission at the annual school meetings, and such election shall be held on the first Tuesday in April of each year, and at such convenient place or places within the district as the board may designate, \* \* \*

\* \* \* \* \*

"3. \* \* \* provided, that if there shall be any other incorporated city or town included in such school district, there shall be at least one polling place within such other incorporated city or town and said school election shall be conducted within the limits of such other incorporated city or town in the same manner as hereinbefore provided for cities or towns having a population exceeding two thousand and not exceeding seventy-five thousand inhabitants."

We have examined the cases which you cited in your opinion request, but do not find them determinative of the question. In addition to the cases cited there are

Honorable Wayne W. Waldo:

many others to be found in the Missouri Digest, under Key No. 227, dealing with the question of whether a statute is to be construed as mandatory or directory. All of the ones we have noted, however, with regard to elections consider the question after the election has occurred. In this instance, however, we are examining the problem before the election is held.

In 20 C.J., Elections, Section 88, page 103, it is said:

"\* \* \* While in some, but not in other, jurisdictions the statutes in terms make it the plain duty of the proper authorities to locate a polling place within the election district or precinct, yet there is vast difference between compelling a performance of this duty by judicial process and rejecting the returns of the precinct because of an irregularity in locating the polling place outside the precinct, \* \* \*"

This same distinction was recognized in *Armantrout v. Ehon*, 349 Mo. 667, 162 S.W. (2d) 867, 1.c. 871, where the court said:

"As the appellant suggests, 'elections should be so held as to afford a free and fair expression of the popular will.' State ex inf. *McKittrick v. Stoner*, 347 Mo. 242, 146 S.W. 2d 891, 894. But 'elections are not lightly set aside' and there is a vast difference in passing on the rules and regulations regarding the conduct of an election before the election is held and after. 29 C.J.S., Elections, Sec. 249, p. 360; 18 Am. Jur., Sec. 206, p. 319. \* \* \*"

In terms, the above-quoted proviso of Section 165.330, supra, places the clear duty upon the board of education to

Honorable Wayne W. Waldo:

establish a polling place in each incorporated city or town in the school district. There is a valid reason for such requirement. The basic principle to be observed in the conduct of elections is to provide a free and fair expression of the popular will. We cite herewith the case of *Bowers v. Smith*, 111 Mo. 45, l.c. 86, not as authority for our position herein but because it expresses the reason for establishing multiple polling places. In the dissenting opinion Gantt, J., made the following statement:

"\* \* \* Observation and experience have taught that one of the greatest evils attending our popular elections has been the crowding of the polls. In this way the not over-scrupulous partisan manages to delay voters, deter the timid and diffident voter, annoy the judges with frequent and unfounded challenges and other interruptions, and block the way for all but his own party. \* \* \*"

To avoid this overcrowding seems to be the basic purpose for the requirement in Section 165.330 that a polling place be established in each incorporated city or town in a school district.

We do not rule herein as to what the result might be if this election is conducted without having provided a polling place in St. Robert because that might well depend upon many additional factors which would affect a decision as to the validity of the election. Viewing the matter as we are before the election is held, we are of the opinion that, since Section 165.330, supra, requires a separate polling place in each incorporated city or town in the school district, the board of education could be forced to designate a polling place in St. Robert by writ of mandamus and that in that sense the proviso of Section 165.330 is mandatory.

#### CONCLUSION

It is the opinion of this office that the proviso of Section 165.330, MoRS, Cum. Supp. 1953, requiring a polling

Honorable Wayne W. Waldo:

place in each incorporated city or town in a school district is mandatory in the sense that the board of education could be required by a writ of mandamus to designate a polling place in such city or town before the election.

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:irk