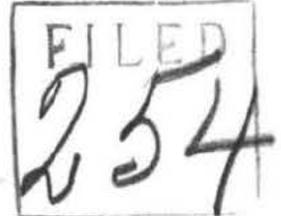


ROAD DISTRICTS:
SPECIAL ROAD DISTRICTS:
GENERAL ROAD DISTRICTS:
ELECTIONS:
SPECIAL ELECTIONS:

A proposition to levy an additional road tax in accordance with Section 137.565, RSMo 1959, may be held in a general road district on the same day and in connection with a general election.

November 23, 1964.

OPINION NO. 254



Honorable Earl L. Veatch,
Prosecuting Attorney
Lewis County
Monticello, Missouri

Dear Mr. Veatch:

You have requested a legal opinion from this office upon the following questions:

"1. Lewis County has four special road districts within its boundaries. The balance of the county consists of one general district. Can a special election be held in this one general road district to vote on a proposition to levy an additional road tax in accordance with Sec. 137.565, Missouri Revised Statutes, 1959?

"2. May such a special election be held at the same time and in connection with the general election in November, using the same judges and clerks as those who serve at such general election.?"

Section 137.565, RSMo 1959, reads as follows:

"Whenever ten or more qualified voters and taxpayers residing in any general or special road district in any county in this state shall petition the county court of the county in which such district is located, asking that such court call an election in such district for the purpose of voting for or against the levy of the tax provided for in the second sentence of the first paragraph of section 12 of article X of the Constitution of Missouri, it shall be the duty of the county court, upon the filing of such petition, to call such election forthwith to be held within twenty days from the date of filing such petition.

The petition so filed shall set out the duration of the tax to be levied in a period of one, two, three or four years and the ballot to be used for voting shall specify the number of years duration of the tax levy, but in no event shall the duration of the tax levy be for a period of more than four years. Such call shall be made by an order entered of record setting forth the date and place of holding such election, the manner of voting and the rate of tax the court will levy, which rate shall not exceed thirty-five cents on the hundred dollars assessed valuation on all taxable real and tangible personal property in the district. A copy of such order shall be published in two successive issues of any newspaper published in such district, if any, and if no newspaper is published in such district, three certified copies of such order shall be posted in public places in such district. The first publication in said newspaper and the posting of such notice shall be not less than ten days before the date of such election. Such court shall also select one or more judges and clerks for such election to receive the ballots and record the names of the voters." (Underlining ours)

The statute directs the county court to call an election for the purpose of voting for or against a tax levy for road propositions in any general or special road district in the event that ten or more qualified voters and taxpayers residing in any special road district shall petition the county court in which such district is located, requesting such an election. The county court is directed to call such an election within 20 days from the date of filing of such petition.

As long as the requirements of the statute are obeyed, there is no reason why such election may not be held on the same day and in connection with the general election in November, or for that matter, in connection with a regular primary, in the absence of any contrary public policy expressed or implied by the Constitution and statutes of Missouri. We find no such prohibition.

There are cogent reasons why such road district election may be held or is permissible on the same day as general elections. The convenience of the voters, availability of the election machinery, reduction in expense of the election, all argue for holding a road district election on the same day as the general election if the other provisions of the statute are complied with. Thus it is possible and indeed appropriate to so time the petition for such road district election as to enable the County Court to set the road district election on the day of a general or a primary election.

Moreover, our view of this matter is reinforced by the provisions of Section 111.255, RSMo 1959, which provides:

"Notwithstanding any other provisions of law, whenever any primary, general or special elections, or elections held by any school district, fire protection district, sewer district, municipalities, or other political subdivision of the state, are held upon the same day in any political subdivision, one polling place for the several elections in each precinct, consolidated precinct or district in the political subdivision shall whenever feasible be designated by the county clerk, board of election commissioners, or other proper election official, having authority over general elections in the political subdivision and the election officials in the polling places shall be designated by the county clerk, board of election commissioners or other proper election official and shall be compensated for one election only. Any person failing or refusing to comply with the provisions of this section is guilty of a misdemeanor."

This statute was enacted in 1957 and demonstrates a legislative policy and intent to authorize and permit various elections to be held on the same day, using the same election officials and facilities.

We do not overlook the case of *Dysart vs. City of St. Louis*, 11 S.W. 2d 1045, decided by the Supreme Court of Missouri en Banc in 1928 wherein an action was brought by a taxpayer to contest the validity of a city bond issue voted upon at an election held on the date of a regular primary election, upon the ground that the statutes regarding special elections had not been complied with. The court held that no special election was involved in the case; that the bond issue was a proposition presented in a general election, and that the vote on the bond issue did not constitute a special election.

The court defined a special election as one taking place at a time different from that at which an election fixed by law is held.

If the Dysart case is construed to mean that a statute using the term "special election" necessarily requires that such election must be held on a day other than the date of a regular general or primary election, we doubt that the court today would follow such interpretation. However, your questions involve Section 137.565, RSMo 1959. Although the caption of the statute as it appears in the revision reads "Special election for tax--petition--duty of county court--notice--", the body of the statute does not use the term "special election". The caption is merely supplied by a revisor for convenience and is not part of the statute. Thus, a road district election pursuant to Section 137.565, RSMo 1959, is not necessarily a "special election" (within the meaning of the Dysart case) and may be held on the date of a general election. We are of the opinion that an election may be held in the general road district referred to in your question number 1 pursuant to Section 137.565, RSMo 1959, and that such election may be held at the same time and in connection with a general election using the same judges and clerks as those serving at such general election. We believe the answers to both of your inquiries are in the affirmative.

CONCLUSION

It is, therefore, the opinion of this office that a proposition to levy an additional road tax in accordance with Section 137.565, RSMo 1959, may be held in a general or special road district on the same day and in connection with a general election.

The foregoing opinion, which I hereby approve, was prepared by my Assistant Donald L. Randolph.

Yours very truly,


THOMAS F. EAGLETON
Attorney General