

ELECTIONS: Mode of conducting elections
COMMISSIONERS: and powers of Commissioners at
SPECIAL ROAD DISTRICTS: Special Road District Commissioners'
Election.

January 23, 1941

1-25
Mr. George Adams
Prosecuting Attorney
Audrain County
Mexico, Missouri



Dear Sir:

This is in reply to yours of recent date wherein you submit the following statement of facts and questions:

"The West Sailing Public Road District is a special road district governed by three commissioners as provided for by statutes. At the last election the names of two persons were placed in nomination for the office of one of the commissioners. The ballot resulted in a tie, 9 for each nominee. A second ballot was taken resulting in the count of 11 and 8. In the first ballot one of the votes was cast by a person residing outside of the district and in fact outside of the county. On the second ballot this same person voted and apparently another person not voting on the first ballot voted on the second. The non-resident owns a farm in the road district but as heretofore stated is not a resident thereof.

"In each of the balloting another vote was cast by a person who did not own land nor was he a tax payer, but he was a resident.

"I would like to know first if the last mentioned person, a resident but not a tax payer or land owner was entitled to vote.

"There is apparently no question but what the non-resident mentioned above was not entitled to vote. Consequently if his vote had not been counted in the first ballot the count would have stood 9-8. On the second ballot the non-resident's vote, of course, did not affect the result as far as a majority was concerned.

"Should the first ballot be the determining one and the person receiving the 9 ballot votes declared elected? Does the second ballot, notwithstanding the vote of the non-resident on the first ballot control?

"Please also give me your opinion as to the procedure necessary to correct the result of the election if in fact an illegal election was held."

Your request indicates that your inquiry concerns a road district formed under the provisions of Article 10, Chapter 42, R. S. Mo. 1929. Section 8061 of this article provides in part as follows:

"County courts of counties not under township organization may divide the territory of their respective counties into road districts, and every such district organized according to the provisions of this article shall be a body corporate and possess the usual powers of a public corporation for public purposes, and shall be known and styled ' _____ road district of _____ county,' and in that name

shall be capable of suing and being sued, of holding such real estate and personal property as may at any time be either donated to or purchased by it in accordance with the provisions of this article, or of which it may be rightfully possessed at the time of the passage of this article, and of contracting and being contracted with as hereinafter provided. * * * * *

It will be noted that the body formed under the provisions of this section, operating through its commissioners, possesses the usual powers of a public corporation for public purposes. Selection of commissioners for such special road districts is provided by Section 8063, R. S. Mo. 1929, which, in so far as it applies to your question, provides as follows:

"At the term of court in which such order is made, or at any subsequent term thereafter, the court shall appoint three commissioners, who shall be residents of the district and owners of land within the district, who shall hold their office until the first Tuesday after the first Monday in January thereafter; and on said date the voters of the district, at an hour and place to be filed by said commissioners, shall elect three commissioners, one of whom shall serve one year, one for two years and one for three years, and on the first Tuesday after the first Monday in January each year thereafter they shall elect a commissioner to take the place of the one whose term is about to expire, who shall serve three years. No person shall be elected or appointed commissioner who is not a resident of the district and an owner of land in the district. * * * * *

It will be noted that this section provides that the voters shall select the commissioners.

You inquire whether or not a voter should be a land owner or a taxpayer before he would be entitled to vote. The commissioner, before he may be selected a commissioner must be an owner of land in the district, but the qualifications of those voting at the election for the commissioner do not have to be land owners or taxpayers. A voter is defined in Section 10178, Laws of Missouri 1939, at page 382, as follows:

"All citizens of the United States, including occupants of soldiers' and sailors' homes, over the age of twenty-one years who have resided in this state one year, and in the county, city or town sixty days immediately preceding the election at which they offer to vote, and no other person shall be entitled to vote at all elections by the people; Provided, each voter shall vote only in the township in which he resides, or if in a town or city, then in the election district therein in which he resides; provided, further, no idiot, no insane person, and no person while kept in any poor-house at public expense, except the Soldiers' Home at St. James and the Confederate Home at Higginsville, or while confined in any public prison shall be entitled to vote at any election under the laws of this state; nor shall any person convicted of a felony or other infamous crime, or of a misdemeanor connected with the exercise of the right of suffrage, be permitted to vote at any election unless he shall have been granted a full pardon; and after a second conviction of felony or other infamous crime, or of a misdemeanor connected with the exercise of the right of suffrage, he shall be forever excluded from voting."

If a voter possesses the qualifications set out in this section, then he can vote for the commissioner at the election held under said Section 8063, supra.

From your statement it seems that the commissioners at the election, the first ballot having been a tie, ruled that a second ballot should be cast. By their ruling that the second ballot should be cast they, in effect, held that the votes cast on the first ballot were legal, and, there being no objection, we think the commissioners were authorized to request that a second ballot be cast. Said Section 8061, supra, would indicate that such bodies are authorized to conduct their business as a public corporation for public purposes and would, therefore, be empowered to determine the procedure for their official business meetings. We think this rule is supported by the announcement of the Supreme Court in the case of *State ex inf. Prosecuting Attorney of Greene County, v. Heffernan*, 243 Mo. 442. In that case the selection of a commissioner of a special road district was under consideration and, in discussing the powers of the voters at the election to select the commissioner, the court said, l. c. 452:

"* * * The commissioners are to call these elections, and indicate the time and place of their holding; and the implication is clear that the manner of taking as well as of ascertaining and recording the result of the vote, is left to that body. The statute provides, as we have seen, that the secretary shall keep a true and complete record of the proceedings of the board, to be attested by him and signed by the presiding officer. * * *"

It will be noted that the court in that case held that the commissioners were authorized to ascertain the result of the election held in the road district. By this power we think the commissioners were authorized to determine

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that the first ballot cast was a tie and to direct that the second balloting for commissioner proceed. That being the case, the balloting on the second ballot would be controlling.

This department is, therefore, of the opinion that a person voting at an election to select commissioners of a special road district under the provisions of Article 10, Chapter 42, R. S. Mo. 1929, is not required to be a taxpayer or a land owner before being entitled to vote.

We are further of the opinion that where a tie vote is cast for a commissioner at such election and the officials at the election so declare and require a second balloting that the result of the second balloting, if not a tie, is binding on the district.

As to the procedure in case of an illegal election being held for a commissioner of a special road district, it is our opinion, from the procedure followed in the Heffernan case, that quo warranto would be proper in such cases.

Respectfully submitted,

TYRE W. BURTON
Assistant Attorney-General

APPROVED:

COVELL R. HEWITT
(Acting) Attorney-General

TWB:CP