

- SCHOOLS:1. Annexation of a district, or a part thereof, provided for in Section 10484 R. S. Mo., 1939 is a "special election."
2. Said election would be valid even though set at the same time as a regular meeting as is provided for in Section 10418 R. S. Mo., 1939.
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May 4, 1942

*W. J. ...*

Honorable William R. Collinson  
Prosecuting Attorney  
Greene County  
Springfield, Missouri

5-7

FILE

Dear Sir:

This is to acknowledge receipt of your letter in which you request an official opinion, as follows:

"This office has had a request from the County Superintendent of Schools relative to the correct procedure under Section 10484, R. S. Missouri, 1939, for the annexation of a school district to a city district, and he has requested us to obtain an opinion from your office.

"The precise question which has come up is whether or not such an election can be held at the regular school district meeting on the first Tuesday in April. At one district in this county all the preliminary requirements, such as the proper petition, were met and the Board of Directors issued a call setting the date of the election on the date of the regular school district election. The proposal was defeated in this district so your ruling on this matter would have no effect at the present time, but the Superintendent of Schools believes that a number of districts will want to vote on the matter next year and they would all prefer to have the election on the

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same day as their general election,  
if this is lawful."

Section 10484, R. S. Missouri, 1939, reads in part  
as follows:

"Whenever an entire school district,  
or a part of a district adjoining  
any city, town or village school  
district, desires to be attached  
thereto for school purposes, upon  
the reception of a petition setting  
forth such fact and signed by ten  
qualified voters of such district,  
the board of directors thereof  
shall order a special meeting for  
said purpose by giving notice as  
required by section 10418. \* \* "

When we turn to Section 10418, R. S. Missouri, 1939,  
to which section we are referred in Section 10484, supra,  
we find that this section provides for an "annual meeting",  
and it is our view that the words annual meeting as used  
in said section are equivalent to annual election.

It was held in the case of State v. Burial Association,  
28 Ohio Cir. Ct. Rep. 379, 1. c. 412, as follows:

" \* \* \* counsel for the relator  
undertake to distinguish between  
the 'annual election' and the  
'annual meeting' provided for in  
the statutes. We think the same  
thing is intended by both ex-  
pressions; \* \* \* \* \* "

3 C. J. p. 196, Note 50.

By the same analogy the use of the words "special meeting", as contained in Section 10484, supra, is equivalent to using the words "special election."

In the case of Buchanan v. Clark, 121 S. W. (2d) 681, 1. c. 684 (Ky.) the court distinguished between a "regular" and a "special" election and quoted with approval from 9 R. C. L. 978, par. 3, as follows:

" \* \* \* "Any election which is not regularly held for the election of officers or for some other purpose which shall come before the citizens at regular fixed intervals is a special election"; whilst general elections are those held upon fixed dates for the choosing of officers for regular periods of time and at which the voters may exercise their choice by casting their ballots. \*

\* \* \* "

Applying the above definition, we find that Section 10418, supra, provides for annual school meetings or annual school elections, and that at said meetings the voters have the power to vote upon any of the matters that may be presented, if they are contemplated by Section 10419, R. S. Missouri, 1939, which section we do not copy for the sake of brevity. In this sense, if a matter was properly before the voters, as provided in Section 10419, supra, then the meeting would be "regular" and the matter would be voted upon at the regular election, provided for in Section 10418, supra. On the other hand, if it were sought to have the voters of the particular school district vote upon any other proposition which was not provided for in Section 10419, supra, then the proposition would have to be voted upon at a special meeting or special election.

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As to the question of the annexation of a district, or part thereof, as provided in Section 10484, supra, we find that this is a special matter not provided for in Section 10419, supra, and it is for this reason that the legislature provided that a special meeting or special election must be had for such proposition could not be presented at the annual meeting, but the legislature, in order to provide for a proper notice adopted the notice provided for in Section 10418, supra. It was held in the case of State v. Andresen, 222 P.585, 1. c.587, as follows:

"A regular election is an election recurring at stated times, fixed by law; while a special election is one arising from some exigency outside the usual routine. \* \* \* "

We must conclude, that an election held for the purpose of annexing a district, or part thereof, to an adjoining city, town or village school district, as is provided for in Section 10484, supra, is "special" in its nature. If the board of directors places the special meeting or special election upon the second Tuesday in April, the date also provided for in Section 10418 for annual meetings, it is our view that said election, or meeting, would not be void, for the reason that the election, or meeting, would be special and would not be effected by Section 10418.

In the case of Hansen v. Malheur County, 86 P. 964, 1. c. 965, par. 3, the court said:

"\* \* \* An election for issuance of road bonds is a special election although held on the same day by the same officers as a general election. \* \* \* " (Citing cases.)

The rule set forth in the above case was also followed by the Supreme Court of Missouri in the case of *Dysart v. City of St. Louis*, 11 S. W. (2d) 1045, l. c. 1051, par. 8, where it is said:

"A definition of 'general election' appears in section 7058, R. S. 1919, as 'the election required to be held on the Tuesday succeeding the first Monday of November, biennially.' Under that definition a general election could occur only once in two years. Should we therefore conclude that every other election which takes place at any other time, whether required by law to be regularly held or not, is a 'special election?' There appears no such legislative intention.

\* \* \* \* \*

"Later enactments indicate a legislative intention to consider a special election as one not provided for by general law, but one which must be especially called." (Underscoring ours.)

The court in this case held that the special election was valid, even though it was held on a regular election date, and the voters voted upon special matters at the same time that they voted upon the regular issues.

#### CONCLUSION

It is our opinion that a special meeting, as is provided for in Section 10484, R. S. Missouri, 1939, may be set upon the first Tuesday in April, notwithstanding the fact that that is the day provided for annual meetings under Section 10418, R. S. Missouri, 1939, and the elec-

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tion, or meeting, provided for in Section 10484 would still be "special" in character, and valid, assuming all of the necessary steps in regard to notice have been adhered to.

Respectfully submitted

B. RICHARDS CREECH  
Assistant Attorney General

APPROVED:

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ROY McKITTRICK  
Attorney General of Missouri

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