

ROADS AND BRIDGES: Town board may vote by mail and may on subsequent appointments of commissioners declare their first, second and third choice.

March 30, 1943

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Honorable W. M. Dawes
Presiding Judge of County Court
Ripley County
Oxly, Missouri

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Dear Judge Dawes:

We are in receipt of your request for an opinion, under date of March 26, 1943, which reads as follows:

"I am writing you for your opinion of Sec. 8026 Revised Statutes of Missouri, 1929, in regard to the appointment of road commissioners.

"The part that is not clear to me is after the district is organized and they have three commissioners appointed, one for a term of three years, one for two years, and one for one year, should the mayor and city council, where the city is a greater distance than ten miles of the meeting place of the county court, send in names of first, second and third choice, or should they just send in one name as there is just one to be appointed at the February Term of court each year thereafter?"

Section 8026 R. S. Missouri, 1929, mentioned in your request, is now Section 8675 R. S. Missouri, 1939.

Section 8675, supra, reads as follows:

"The mayor and members of the city council of any city or town within any special road district thus organized, together

with the members of the county court of the county in which said district is located, at a meeting to be held in the county court room, at which meeting the presiding judge of the county court shall preside and the county clerk shall act as clerk, within two weeks after the voters within the territory of such proposed district shall adopt the provisions of this article, shall, by order of record to be kept by the county clerk, appoint a board of commissioners composed of three persons, designating one to serve for three years, one for two years and one for one year, and in February every year thereafter one commissioner shall be appointed as above specified, to serve for three years; all such commissioners shall be resident taxpayers of the district, and shall serve until their successors are appointed and qualified, vacancies to be filled as original appointments are made. Resignations shall be to the county clerk. Removal from the district shall create a vacancy. Such commissioners, before entering upon the discharge of their duties, shall take oath of office, to be administered by the clerk of the county court: Provided, that where the city is located a greater distance than ten miles from the meeting place of the county court, the mayor and city council of the city or town within the road district for which commissioners are to be appointed, may make a written certificate of their choice of the commissioner or commissioners to be appointed, designating their first, second and third choice and seal the same and transmit it to the county clerk by mail or by special messenger and the choice and selection designated in such certificate shall be given the same consideration as though the board and mayor were present at the meeting of the court: Provided,

that such certificate shall be given over the signature of the mayor or acting mayor attested by the seal of the city and signature of the city clerk."

It will be noticed in the proviso of the above section that the legislature allowed the mayor and councilmen, of cities in special road districts located more than ten miles from the meeting place of the county court where the road commissioner or commissioners are appointed, to elect to vote by mail and designate their first, second and third choice.

This statute was enacted for the purpose of economy and making it certain that the road commissioner, or commissioners, would be appointed at the time of the election.

Under the statute it is not mandatory that they vote by mail, but, if they do vote by mail they must designate their first, second and third choice, even after the first meeting after the organization of the road district. Where only one commissioner is to be appointed, if the mayor and council of such city elect to cast their vote by mail, under this section they should designate their first, second and third choice, and in that way the commissioner would be appointed.

That such a procedure should be followed was held in the case of *State ex inf. Holt, Pros. Attorney, ex rel. Jones v. Meyer*, 12 S. V. (2d) 489, l. c. 490, where the court said:

" * * * We have ruled the statute as originally enacted authorized each member of the meeting to cast a vote; and, if the choice designated in the certificate is to be given the same consideration as though a member was present and voting, then his choice designated in the certificate must be counted as a vote for commissioner. The requirement that the first, second, and third choice be designated has reference to the first meeting

after the organization of the district, when three commissioners are to be appointed. Thereafter, at a meeting for the appointment of only one commissioner, the first ballot might not result in an appointment; if so, on the second ballot the absent member's second choice could be voted, and so as to his third choice." (Underscoring ours.)

In the last paragraph in the above case the court specifically said:

" * * * Thereafter, at a meeting for the appointment of only one commissioner, the first ballot might not result in an appointment; if so, on the second ballot the absent member's second choice could be voted, and so as to his third choice." (Underscoring ours.)

The court clearly held that where an appointment was to be made of one commissioner, that is at some future meeting after the first meeting, subsequent to the organization of the road district, if the mayor and council should elect to designate by mail, they should designate their first, second and third choice. The above case is the only and ruling case on this section of the statute.

CONCLUSION

It is, therefore, the opinion of this department, that under Section 8675 R. S. Missouri, 1939, the mayor and city council of a city located a distance of more than ten miles from the place of the meeting of the county court where a road commissioner is to be appointed may send in their designation for said appointment or appointments by mail.

Honorable W. M. Dawes

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It is further the opinion of this department, that if the mayor and council of a city in a special road district, which city is located more than eight miles from the meeting place of the county court where a road commissioner, or commissioner is to be appointed, elect to cast their vote by mail, then they should, even though one commissioner only is to be appointed, designate their first, second and third choice.

Respectfully submitted

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APPROVED BY:

ROY McKITTRICK
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