

ELECTIONS:
BOND ISSUE:

A bond issue for a county hospital may
be submitted at a primary election.

April 26, 1946

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Honorable Roscoe D. Moore
Prosecuting Attorney
Perry County
Perryville, Missouri

Dear Sir:

This Department is in receipt of your request for an official opinion which reads as follows:

"There has been a petition filed with the County Court under Sec. 15192 R.S. 1939, asking the county court to call an election on a bond issue for a county hospital at the Primary Election to be held August 8, 1946. As I read this statute and also Sec. 15193 it seems to me at least very doubtful that an election for this purpose could be held on primary election day. Would you please give me your opinion whether or not an election for this purpose could be held on primary election day? I would need this opinion by April 30th."

Section 15192, R.S. Mo. 1939, provides that any county may establish a public hospital upon a petition signed by one hundred residents of said county being submitted to the county court and "such county court shall submit the question to the qualified electors of the county at the next general election to be held in the county, or at a special election called for that purpose."

Section 15193, R.S. Mo. 1939, provides, in part, as follows:

"The county court shall submit to the qualified electors of the county, at a regular or special election, the question whether there shall be levied upon the assessed property of such county a tax of _____ mills on the dollar for the purchase of real estate for hospital purposes and for the construction of hospital buildings, and for the maintenance of same, or for either or all of such purposes. The ballots to be used at any election at which the hospital question is submitted, shall be printed with a statement substantially as follows:

"For a _____ mill tax for a bond issue for a public hospital and for maintenance of same.

Yes.

No.

* * * * *
 * * * * *"

The identical question presented in your request was before our Supreme Court in *Dysart vs. City of St. Louis*, 321 Mo. 514, 11 S.W. (2d) 1045. The facts in that case as given by the Court were as follows:

l.c. 1046:

"The plaintiff, a resident and taxpayer of the city of St. Louis, brought this suit to restrain the city of St. Louis, the mayor, comptroller, and treasurer, from issuing and delivering certain bonds voted upon at an election held in St. Louis August 7, 1928, the date of the regular primary provided by law.

The Court in that case held that elections are divided into two classes, general and special. A special

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election being one called for a special purpose, while a general election is one fixed by law to occur at regular intervals. The Court further broke down general elections into primary elections and regular, or final, elections. The Court further pointed out that what is now Section 655, R.S. Mo. 1939, which defines general election as "the election required to be held on the Tuesday succeeding the first Monday of November, biennially", was passed before the enactment of the general primary law which, therefore, could not have been included in the definition of general election.

The Court in conclusion, l.c. 1053, said:

"* * * A proposition to issue bonds may be submitted at a regular primary election, and such submission does not constitute it a special election.

"It is a matter of common knowledge that at nearly every general election propositions are authorized and submitted to the voters as special propositions. Submissions of these special propositions are not, in common parlance, called special elections. They are merely votes on special propositions submitted at a general election."

This view is confirmed by a reading of the two above quoted statutes, because it will be noted that in Section 15192, supra, the term "general or special election" is used, while in Section 15193 the words "regular or special election" are used.

The Legislature by such phraseology clearly indicated that when they used the term "general election" they did not mean it in its commonly accepted meaning of the election held on the Tuesday succeeding the first Monday of November, but rather used it in contradistinction from the term "special election".

CONCLUSION.

It is, therefore, the opinion of this Department that a proposition to issue bonds for the building of a

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county hospital under Sections 15192 and 15193, R.S. Mo. 1939, may be submitted at a regular primary election.

Respectfully submitted,

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Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

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