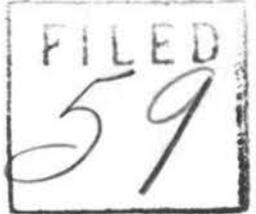


COUNTY SCHOOL FUND: Proposal to liquidate carried where receives majority of votes cast both for and against proposal.



November 24, 1948

Honorable Roy W. McGhee
Prosecuting Attorney
Wayne County
Greenville, Missouri

11-29

Dear Mr. McGhee:

We have your letter of recent date, requesting an opinion of this office as to whether or not the County Clerk of your County should certify that the proposal for the annual distribution of the capital of the liquidated county and township school funds, submitted at the recent election, was carried at said election. You stated that there were 4,571 votes cast in the County at the general election for the office of Governor, but that only 1,135 votes were cast for the above proposal and 185 votes cast against said proposal.

We believe that a conclusion in this matter can be reached by careful consideration of the applicable statutes. Section 10376.2, Mo. R.S.A., provides, in part, that:

"Said proposal shall be submitted at a special election to be held for that purpose within sixty days after the filing of the petition therefor or at the next general election held in such county. * * * *"

Said section further provides:

"* * * * Such special election shall be governed in all respects by the general election laws except wherein such general election laws are in conflict with this article. * * * *"

Regarding the certification of the results of such election, we find the following provision in said section:

"* * * * The results of the balloting at each election precinct shall be certified by the judges of election of such election precinct and attested by the clerks and transmitted to the body having control of the capital of the county and township school funds, which said body shall, from such results so certified and attested, within ten days, determine whether the proposal to distribute annually the liquidated capital of the county and township school funds has received a majority of the votes cast in the county or City of St. Louis wherein such election shall have been held. If the proposal to distribute annually the capital of the liquidated county and township school funds shall receive a majority of the votes cast, the body having control of such county and township school funds shall proceed to thereafter distribute annually such liquidated funds to the school districts.* * *"

Therefore, we see that the proposal is submitted at a special election regardless of whether the election is held by itself or in connection with a general election. Of course, under the well settled rules of statutory construction, the intent of the Legislature is of primary concern in the construction of statutes. We believe that the evident intent of the Legislature, in providing that the proposal shall carry if it receives a majority of the votes cast, was that the proposal should carry if it receives a majority of the votes cast in the special election. That is to say, a majority of the total of the votes cast, both in favor of and against the proposal. The fact that the special election on said proposal was held in connection with the general election, and that more votes were cast for certain state and county officers than were cast both for and against said proposal, should be of no consequence.

CONCLUSION

In view of the foregoing, it is the opinion of this office that, if, in an election on the proposal for the annual distribution of the capital of the liquidated county

Hon. Roy W. McGhee

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and township school funds, a majority of the votes cast on said proposal are favorable, said proposal should be certified as carried in the manner provided in Section 10376.2, Mo. R.S.A., and other applicable statutes.

Respectfully submitted,

DAVID DONNELLY
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

DD:LR