

COUNTY-LIBRARY: Election to establish County Library System to be held at annual school meeting and conducted as election for county superintendent of schools.

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March 19, 1948

Mr. John W. Smith
Prosecuting Attorney
Washington County
Potosi, Missouri

Dear Sir:

This will acknowledge receipt of your letter of February 27, 1948, in which you request an opinion of this Department. This letter, omitting caption and signature is as follows:

"The County of Washington is going to vote on a tax levy for a County wide library, and, of course, the proposition of establishing a county wide free library.

Sections 14767 and following sections of Article VI of Chapter 110 deal with this subject.

It appears to me from Section 14767 of this said article that the voting will be done at the annual school election on the first Tuesday in April.

Some questions arise as follows: (1) Will the votes be taken and recorded by the officials that take and record the votes on matters that have heretofore been voted on at such elections; (2) if so, does the County Court have to do anything toward naming the officials who take and record said votes; (3) what certifications are made, if any, by those taking and recording said votes to the County Court; (4) what is done with the ballots that are cast on these propositions, are they placed in a sealed envelope and certification made by the proper authority and returned to the County Court for canvassing; (5) what supplies, if any should the County Court furnish school districts voting on these propositions; (6) what instructions, if any, should the County Court give those taking and recording said votes in the various districts?

We shall appreciate very much your assistance in this matter."

It will be noted that this opinion request contains six different questions concerning an election for the establishment of a County Library to be answered by this Department and we will discuss these questions in the order in which they are set out in your request, supra.

The first question to be considered is, "Will the votes be taken and recorded by the officials that take and record the votes on matters that have heretofore been voted on at such elections?" The first statute which we must consider is Section 14767, Mo. R.S.A., which, in part, provides the following:

"Whenever one hundred (100) taxpaying citizens of any county, outside of the territory of all cities and towns now or hereafter maintaining, at least in part by taxation, a public library, shall in writing petition the county court, asking that a county library district of the county, outside of the territory of all such aforesaid cities and towns, be established and be known as '_____ county library district,' and asking that an annual tax be levied for the purpose herein specified, and shall specify in their petition a rate of taxation not to exceed two mills on the dollar; then the county court shall, if it finds said petition was signed by the requisite number of qualified petitioners, enter of record a brief recital of such petition, including a description of such proposed county library district, and of its finding aforesaid; and shall order that the propositions of such petition be submitted to the voters of such proposed district at the next annual election to be held at the first Tuesday in April; and that the clerk of the County Court shall cause to be published the proposition or propositions of such petition; and said county clerk shall cause said proposition or propositions to be published in like manner, as near as may be, with the publication of 'the nominations to office,' as provided in Section 11542, R.S. 1939. * * *"

The above statute, as stated in your letter, sets the time for such election to be on the date of the annual election to be held on the first Tuesday in April. This reference to the "next annual election" apparently refers to the annual school meeting which is held on that date under the provisions of Section 10418, R.S. Mo. 1939

The provisions of Article 6, Chapter 110 of the Mo. R.S.A., refer to County Library Districts, and since there is no provision made therein for the selection of election judges or officials, we must then look to the intention of the Legislature in failing to enact any such provision. It seems reasonable to suppose that if special judges or officials were wanted by the Legislature for an election on the County Library Systems, it would have made provision for their appointment or election. However, such provision was not made, but the Legislature did provide that the election was to be held at the annual school meeting which would indicate that the Legislature intended to use whatever election machinery was available at such meeting.

It is well settled in Missouri that where a statute provides for an election but makes no specific provision for the mode of conducting such election it will be governed by the law for the conducting of other elections in the district or subdivision. In *State ex rel. Miller v. M.K. & T. Ry. Co.*, 164 Mo. 208, the court said at page 213:

" * * * The power being conferred to hold an election and no means provided therefor, carries with it as an inevitable and indubitable incident the usual and customary means to put into effect the power thus conferred. * * *"

In the cases of *State ex rel. Clark County v. Hackmann*, 280 Mo. 686, 218 S.W. 318, and *State ex rel. Gilpin v. Smith*, 339 Mo. 194, 96 S.W. (2d) 40, elections were held sufficient where the ordinary and usual machinery provided for obtaining the expression of the voters upon the question was used.

Therefore, we must look to the statutes to determine if the Legislature has provided a method of holding an election upon a question similar to the one under consideration. Every four years a county superintendent of schools is elected at the annual school meeting (Section 10609, Mo. R.S.A.). The election in which the propositions to establish a County Library District and provide a tax therefor are submitted is substantially a county election. We believe that the procedure for the conduct of the election to elect the county superintendent of schools is analogous and should be followed in such election.

Provision is made for the election officials in the election to elect a county superintendent of schools under the provisions of Section 10610, Mo. R.S.A., which, in part, provides the following:

"The voting for county superintendent shall be by ballot and all ballots cast shall be counted for the persons for whom cast, and it is hereby made the duty of the members of the board of directors and the chairman and secretary of the annual school meeting to see that each ballot so cast is counted for the person receiving the same, and it is hereby made the duty of the chairman of the annual school meeting, within two days after such meeting, to transmit the tally sheets and all ballots, in person or by registered letter, to the clerk of the county court; such ballots to be in a sealed package, separate and apart from such tally sheets, such package being properly designated."

In view of the above provisions of the statute and of the failure of the Legislature to provide for the election or appointment of judges for an election relative to the establishment of a County Library System, we believe that the votes on the establishment of such a system will be taken and recorded by the officials designated by the statutes to preside at the election of the county superintendent of schools.

Your second question is, "Does the County Court have to do anything toward naming the officials who take and record said votes?" Under the statutes pertaining thereto the county court has no power over the selection of the officials, but said officials are provided for in Section 10610, supra, and the votes are counted by the board of directors, the chairman and secretary of the annual school meeting who are the only officials named by the statutes.

Your third question is, "What certifications are made, if any, by those taking and recording said votes to the County Court?" Section 10610, supra, provides for the returns of the election of the county superintendent of schools, and such provision will govern as to the returns of the election for the establishment of a County Library System. This provision is, in part, as follows:

" * * * At least ten days before the annual school meeting in any year when a county superintendent of public schools is to be elected, the county clerk shall cause to be printed ballots with the names of the candidates who have filed declarations of their candidacy printed thereon in alphabetical order, said ballots to be substantially in the following form: * * * The clerk of the

county court shall cause to be delivered to the president or clerk of the board of school directors of the various districts of the county a sufficient number of ballots for the voters of the district and a tally sheet of sufficient size to contain the names of all the qualified voters of such districts, which tally sheets shall so far as practical conform to the form of poll book set out in Section 11490 of Article 2, Chapter 76, Revised Statutes of Missouri, 1939, relating to general elections; and in making the returns of such election, the tally sheets shall be certified by the chairman and secretary of such annual school meeting and attested by the members of the board of directors of the district, who may be present. * * *

The fourth question is, "What is done with the ballots that are cast on these propositions, are they placed in a sealed envelope and certification made by the proper authority and returned to the County Court for canvassing?" Again, following the same reasoning as we did in answering the first question set out in your letter, we find that Article 6, Chapter 110, dealing with County Library Districts, does not provide for the disposition of the ballots after the election other than they will be certified to by the county court. Consequently, we feel that we should go to the other laws governing the election of county superintendent, and cite the following passage from Section 10610, supra:

"such ballots to be in a sealed package, separate and apart from such tally sheets, such package being properly designated."

Your fifth question is, "What supplies, if any, should the County Court furnish school districts voting on these propositions?" Such an election is of county-wide interest and is ordered by the county court after certain preliminary steps are completed. We feel that there can be no doubt that this is a county election, as much so as one held for the election of the county superintendent of schools. Consequently, there being no specific statute on this question, it should follow that the county court, through the county clerk, must furnish the same supplies for this type of election as for an election for the county superintendent of schools, as provided by that portion of Section 10610 previously quoted.

The sixth and last question in your request inquires as to "what instruction, if any, should the County Court give those taking and recording said votes in the various districts?" The statutes

do not provide for any instructions, as such, to be given the judges or election officials by the county court. However, Section 10610, supra, prescribing the duties of the election officials, must be followed.

Conclusion.

It is therefore the opinion of this department that:

(1) The persons conducting the elections at the annual school meeting shall be the election officials for the election to establish a County Library System.

(2) The county court has no authority to appoint judges for such election.

(3) The certification as to the result of the election is made by the chairman and secretary of the school board and the members of the board that are present.

(4) All ballots are delivered to the clerk of the county court by the chairman of the annual school meeting after having been placed in a sealed package separated from the tally sheets.

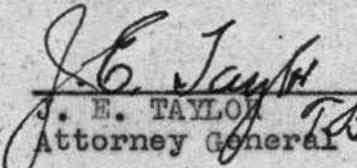
(5) The same supplies should be furnished by the county court, through the county clerk, as are furnished for the election for county superintendent of schools.

(6) There being no specific instructions to be given to those taking and recording the votes, Section 10610, Mo. R.S.A., prescribing the duties of such election officials, must be followed.

Respectfully submitted,

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Assistant Attorney General

APPROVED:



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Attorney General