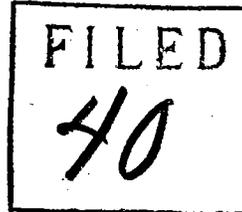


**ELECTIONS:**

A county may conduct a special election for distribution of school funds on the same date, and with the same officials as are employed in the forthcoming gasoline tax referendum.

January 28, 1950

Honorable Roger Hibbard  
Prosecuting Attorney  
Marion County  
Hannibal, Missouri



Dear Mr. Hibbard:

We have your recent letter in which you request an opinion from this office. The pertinent portion of your letter is as follows:

"The provisions of Section 10376, et seq, provide for a special election by the qualified voters of the respective counties to determine the question of distribution of accumulated school funds, said election to be held either as a special election or as a general election in said county upon proper notice.

"The voters of Marion County have filed petitions bearing the necessary number of signatures to hold this election and it is the desire of the County Court to hold the election on the same date and using the same election officials that will be used in the state-wide gasoline tax referendum in April. The question of law involved, is whether or not there is authority to do so."

You have, since the date of your letter, informed us that the statement in your letter that the petitions have been filed was erroneous; that the facts are that the petitions have only been prepared for filing.

As you suggest in your letter, the relevant statutes are as follows:

Laws of Missouri, 1945, Section 10376, page 1628:

"It is hereby made the duty of the several county courts of this state to collect diligently and, when authorized by law, to invest

securely the proceeds of all moneys, stocks, bonds and other property belonging to or accruing to the county school fund. On and after the effective date of this act, all real estate loans and investments now belonging to the county school funds, except those invested as hereinafter provided, shall be liquidated without extension of time upon the maturity thereof, and the proceeds thereof and the money then on hand belonging to said school fund of the county shall be reinvested in registered bonds of the United States, or in bonds of the state, or in approved bonds of any city or school district thereof, or in bonds or other securities the payment of which is fully guaranteed by the United States Government, and shall be preserved as a county school fund; Provided, that all interest accruing from such reinvestment of the county school fund, the clear proceeds of all penalties, forfeitures and fines collected for any breach of the penal laws of the state, the net proceeds from the sale of estrays, and all other money lawfully coming into said fund, shall hereafter be collected and distributed annually to the school of the county as hereinafter provided in this article."

Laws of Missouri, 1947, Vol. I, Sec. A, page 285, is as follows:

"That Section 2 of an Act of the 63rd General Assembly, known as Senate Bill No. 186, approved March 26, 1946, entitled 'AN ACT To provide for holding elections in the several counties and the City of St. Louis upon the proposal to distribute annually the capital of the liquidated school funds, with an emergency clause.', be and the same is hereby repealed and two new sections be enacted to be known and designated as Section 2 and Section 2a, both relating to the holding of elections in the several counties and the City of St. Louis upon the proposal to distribute annually the capital of the liquidated school fund, and to read as follows:

Section 2, supra, is in part as follows:

"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. Notice of such election shall be given by publication in some newspaper of general circulation within the county or City of St. Louis for not more than two weeks, the last insertion to not be longer than one week prior to the date of such election. The proposal shall be submitted on a ballot in substantially the following form:

"For annual distribution of the capital of the liquidated county and township school funds.

"Against annual distribution of the capital of the liquidated county and township school funds.

"Said ballot shall carry upon it instructions to the voters to strike out the statement not indicating their preference. The voting shall take place at the regular election precincts in the area wherein such election shall be held, unless the election districts or precincts are consolidated as hereinafter provided, and the judges and clerks thereof shall be selected by the board having authority to make such appointments for general elections. Judges and clerks shall be the same in number at each election precinct as is provided by law for general elections, unless reduced in number as provided in Section 2a; and they shall receive the same compensation as may be provided for judges and clerks serving at general elections. The costs incident to such election shall be paid by the county wherein such election is held or by the City of St. Louis. 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.

\* \* \*"

Section 2a, supra, is as follows:

"The county courts in the several counties of this state in relation to any election upon the proposal to distribute annually the capital of the liquidated school fund shall have the power and authority, in its discretion, to consolidate two or more election districts or precincts in their respective counties, and to use in such election districts or precincts the number of judges and clerks, not to exceed two each, that it may deem necessary."

The most significant section, for our purposes, are those parts of Section 2, Laws of Missouri, 1947, supra, reading as follows:

"\* \* \* and the judges and clerks thereof shall be selected by the board having authority to make such appointments for general elections.

\* \* \* \* \*

"Said proposal shall be submitted at a special election to be held for that purpose \* \* \* or at the next general election held in such county.  
\* \* \*"

It appears from the above quoted sections that the election for distribution of the county school funds may be held at a special election and that the judges and clerks thereof shall be selected by the board which makes the appointments in the general elections. It is important to note that there is nowhere any prohibition in the above statutes against such special election being held on the same date as any other special or general election, so long as the requirements regarding general elections are complied with. Nor is there any wording which would indicate an objection to using the same judges and clerks for more than one proposition or election. The only specific provision on this question is that the judges and clerks shall be selected by the same board which appoints for the general election.

To this point, then, there is no reason to prohibit, or even to suggest, that it would be improper to hold the school fund distribution election on the same date, and with the same officials, as are employed for the gasoline tax referendum.

There remains, therefore, only an examination of the general election laws as they may relate to the specific situation you describe.

January 28, 1950

The last quoted sentence of Laws of Missouri, 1947, Vol. I, page 285, Section 2, is: "Such special election shall be governed in all respects by the general election laws."

An examination of the general election laws, particularly Sections, 11499, 11501 and 11504, R. S. Mo., 1939, relating to election judges, reveals nothing that would prohibit the same persons from serving as the judges of both elections.

In a previous opinion of this office, dated February 12, 1945, addressed to the Honorable William E. Shirley, Prosecuting Attorney of Adair County, this office held that the same persons could serve as judges and clerks for two elections, both special. In that opinion, the following language appears:

"It is apparent that no conflict need arise in the conduct of the election, as both are to be held in accordance with the statutes relating to general elections \* \* \*. We are of the opinion that an otherwise eligible person can serve as judge or clerk in both elections."

If then, the gasoline tax referendum is also to be conducted in the manner provided for by the general election laws, there would be no conflict in the conduct of these two elections and therefore they could be held on the same date and conducted by the same officials.

The resolution authorizing the gas tax referendum provides in substance:

"Pursuant to referendum petition filed on 10th of October, 1949, a special election, to be conducted pursuant to the laws and constitutional provisions of this State applicable to general elections of this State is hereby ordered and shall be held in the State of Missouri on Tuesday, the 4th day of April, 1950 submitting to the qualified voters of this State for their approval or rejection House Committee Substitute for H. B. 185 passed by the 65th General Assembly and approved by the Governor on August 27, 1949."

(Underscoring ours.)

It is therefore clear that both elections are to be governed by the same laws and thus there will be no conflict resulting from conducting both elections on the same date and by the same officials.

Hon. Roger Hibbard

January 28, 1950

CONCLUSION

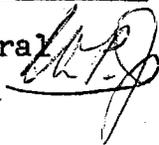
It is the opinion of this office that a county may hold an election upon the proposition of making annual distribution of the capital of the liquidated school funds on the same date, and using the same election officials, as are employed in conducting the forthcoming gasoline tax referendum, provided the petitions requesting such election are filed within sixty days before said referendum.

Respectfully submitted,

H. JACKSON DANIEL  
Assistant Attorney General

APPROVED:

J. E. TAYLOR  
Attorney General



HJD:hr