

STOCK LAW:

ANIMALS:

Township adjoining group of five townships which has previously voted to invoke stock law may thereafter vote to withdraw operation of stock law.

May 16, 1952

5-21-52

Honorable John W. Belew
Prosecuting Attorney
Ripley County
Doniphan, Missouri



Dear Sir:

Your letter at hand requesting an opinion of this department, which reads as follows:

"My county is a rural county in which there is much concern over the stock law. One of our townships last year voted to restrain livestock from running at large. This year some of the people in the township want to hold an election to revoke this action.

"Section 270.160, Rev. Statutes of Missouri, 1949, gives the privilege of holding an election to restrain livestock. In the latter part of the section is the proviso: 'provided, however, that nothing in this section shall be construed to prevent the petitioning for and holding of an election to permit animals to run at large in townships that have voted to restrain said animals from running at large. But I have been unable to find any implementing legislation as to the procedure.

"What I would like to know boils down to this: May an election be held permitting animals to run at large in a township after an election has prohibited their running at large? If such an election is possible, what is the procedure for holding that election?"

Honorable John W. Belew

Pursuant to our further inquiry you stated that the township which would vote out the stock law is one which adjoins a group of five townships which have previously voted to invoke the provisions of the stock law. Thus the applicable statute which pertains to this situation is Section 270.160, RSMo 1949, which provides:

"Whenever any five or more townships in one body in any county in the state of Missouri have heretofore adopted the laws governing the question of restraining horses, mules, cattle, asses, goats, swine and sheep, or any two or more of the above named classes of animals, as provided in this chapter, then any one or more townships that have not adopted said law and that are adjoining said five or more townships in the same or an adjoining county, by a petition of twenty-five householders of each township desiring to adopt said law, petition the county court for the privilege to vote on the question of restraining horses, mules, asses, cattle, goats, swine and sheep, or any two or more of the above named classes of animals, from running at large, the same laws governing counties are hereby applied to said township or townships, and said petitioners shall not be debarred the right to restrain said animals if a majority of the qualified voters, voting on the question of restraining said animals, at any regular or special election in said township or townships, vote in favor of restraining said animals; provided, however, that nothing in this section shall be construed to prevent the petitioning for and holding of an election to permit animals to run at large in townships that have voted to restrain said animals from running at large."
(Emphasis ours.)

In the case of State ex rel. Browning v. Juden, 264 S.W. 101, the Springfield Court of Appeals was construing the above statute, and, in holding that one or more townships which have in a separate election joined a body of five or more townships cannot withdraw in another separate election to permit animals to run at large, said at l.c. 102, 103:

Honorable John W. Belew

" * * * To hold that the proviso above quoted would permit one or more townships that had joined a body of five or more townships in restraining stock from running at large to vote separately on the question of permitting stock to run at large might lead to the absurd result of placing a single township in the position of restraining stock from running at large when no other township adjoining it was restraining them. * * *

"Our conclusion is that one or more townships that have by separate election joined the body of five or more cannot withdraw in a separate election. * * *"

In other words, in the above case the court gave a construction to the proviso underscored in the above statute as not permitting a township which had joined a body of five or more townships in restraining stock from running at large to thereafter vote on the question of permitting stock to run at large.

In the very recent case of State ex rel. McMonigle v. Spears, 358 Mo. 23, 213 S.W. (2d) 210, the Supreme Court of Missouri, en Banc, was construing what is now Section 270.130, RSMo 1949, relating to two or more townships petitioning and voting to invoke the stock law. This statute also contains a proviso very similar to the one underscored in Section 270.160, supra, and which reads as follows:

" * * * provided, however, that nothing in this section or chapter shall be construed to prevent the petitioning for and holding of an election to permit animals to run at large in any township or townships that have voted to restrain said animals from running at large, notwithstanding the county or township has theretofore voted to restrain animals from running at large."

In declaring the effect of the proviso the court, at S.W. 1.c. 214, said:

Honorable John W. Belew

" * * * It has been held twice by the Springfield Court of Appeals, in whose district most of these cases arise, that the voters cannot do that. The first case was State ex rel. Browning v. Juden, Mo. App., 264 S.W. 101, decided in 1924. That case arose under Sec. 14479, the five township section, supra, which contains a proviso exactly like that appearing in the 1945 version of Sec. 14470a, except that the words 'or article' and 'any township or,' which we have italicised in setting out the statute above, were omitted. The Court of Appeals opinion construed the statute as meaning two townships could not vote themselves out of a five township unit because it would produce a confusing and unjust result by attrition.

* * * * *

"In response to that, evidently, the Legislature adopted the 1945 and 1947 versions of Sec. 14470a, applicable to two or more townships in one body in one county. In the proviso of the 1945 Act it added the words 'or article' and 'any township or', which we have italicised in setting it out above. This had the effect of excluding from consideration anything said elsewhere in the whole article, as bearing an implication against the proviso. And it further excluded the construction put on the statute in the Browning case, that two townships could not vote to permit stock to run at large if they had previously voted to restrain the stock. * * * (Emphasis ours.)

The Supreme Court did not specifically overrule the Juden case, but as we read the decision in the McMonigle case, and particularly its reference to the construction given the statute being considered in the Juden case, we believe that the decision of the Springfield Court of Appeals was impliedly overruled.

In other words, the provisos contained in the two statutes above cited are substantially the same, and the construction given to the proviso contained in Section 270.130 would now be applicable in determining the construction to be given to the

Honorable John W. Belew

proviso contained in Section 270.160, which we are considering in this opinion. Therefore, it would follow that the township in question adjoining the group of five townships would not be prohibited from voting to withdraw from the operation of the stock law after it had previously voted to invoke it.

CONCLUSION

It is therefore the opinion of this department that a township which has voted to invoke the stock law and to restrain stock from running at large, and which adjoins a group of five townships which have previously voted to enforce the stock law, is not thereafter precluded from withdrawing the operation of the stock law by holding an election in said township to permit animals to run at large.

Respectfully submitted,

RICHARD F. THOMPSON
Assistant Attorney General

APPROVED:



J. E. TAYLOR
Attorney General

RFT:ml