

SCHOOL ELECTIONS: The board of directors of a city school
COUNTY SUPERINTENDENTS: district at a school election held
VOTING PLACES: separate and apart from a municipal
REGISTRATIONS: election, at which a county superin-
tendent of schools is to be elected
may fix a single voting place where voters of the district may
cast their ballots, or if such election is held in conjunction
with a municipal election on the same date, the board may design-
ate voting places for the casting of ballots in said election
in the residential wards and precincts of the voters of such
city. All voters residing in a city of the third class having
a population of not less than 10,000 nor more than 30,000 in-
habitants are not required to be registered to vote for county
superintendent of schools when board has designated a single
voting place, under terms of Section 165.330, RSMo 1949.



May 13, 1955

Honorable W. C. Whitlow
Prosecuting Attorney
Callaway County
Fulton, Missouri

Dear Mr. Whitlow:

This will refer to your letter requesting the opinion
of this office on the subjects mentioned in your request,
which reads as follows:

"At the request of the County Clerk and
the Board of Directors of the Fulton
School District I would like your opinion
regarding legality of the school district
maintaining one voting place for a school
election at which a County Superintendent
of Schools will also be elected. I am en-
closing a statement of facts which, I be-
lieve, covers the situation involved
thoroughly.

"The questions as I understand them are:

1. Can a single voting place be
used by the school district at a
school election at which a County
Superintendent of Schools is to
be elected?
2. Does the regular registration
required of voters in a general
election apply to the election of
a County Superintendent of Schools?

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"I would appreciate your immediate attention to these questions since the election is to be held on April 5.

"After reading Sections 167.020 and 165.330 it is my off-hand opinion that a County Superintendent of Schools is elected at a school election in a manner prescribed by the Board of Directors as long as it does not violate the general election safeguard as provided by the Constitution and statute.

"I regret to say, however, that my opinion as Prosecuting Attorney won't be accepted and it takes the personal designation of the Attorney General to make the opinion acceptable."

Statute numbers herein, unless another revision is specifically given, refer to RSMo 1949.

Your request submits the following questions:

- 1) Can a single voting place be used by the school district at a school election at which a County Superintendent of Schools is to be elected?
- 2) Does the legal registration required of voters in a general election apply to the election of a County Superintendent of Schools?

Considering your first question, we turn to Section 167.010. That section provides for the election every four years of a County Superintendent of Schools. Said section reads, in part, as follows:

"The qualified voters of each and every county in this state shall elect a county superintendent of public schools at the annual district school meeting held on the first Tuesday in April, 1943, and every four years thereafter. * * *"

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The time and the manner of holding a district school election as required by Section 167.010, supra, are provided for by Section 165.330, which reads, in part, as follows:

"1. The qualified voters of such town, city or consolidated school district shall vote by ballot upon all questions provided by law for submission at the annual school meetings, and such election shall be held on the first Tuesday in April of each year, and at such convenient place or places within the district as the board may designate, beginning at six o'clock a.m. and closing at seven o'clock p.m. of said day. The board shall appoint three judges of election for each voting place, and said judges shall appoint two clerks; said judges and clerks shall be sworn and the election otherwise conducted in the same manner as the elections for state and county officers and the result thereof certified by the judges and clerks to the secretary of the board of education, who shall record the same, and, by order of said board, shall issue certificates of election to the persons entitled thereto; and the results of all other propositions submitted must be reported to the secretary of the board, and by him duly entered upon the district records.

"2. All propositions submitted at said annual meeting may be voted for upon one and the same ballot, and necessary poll books shall be made out and furnished by the secretary of the board; provided, that in all cities and towns having a population exceeding two thousand and not exceeding seventy-five thousand inhabitants, said elections may at the option of the board be held at the same time and places as the election for municipal officers with the judges and clerks of such municipal election serving as judges and clerks of said school election, but the ballots for said school election shall be upon separate pieces of paper and deposited in a separate ballot box kept for that purpose.

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"3. Should such school district embrace territory not included in the limits of such city or town, the qualified voters thereof may vote at such voting precinct as they would be attached to, provided the ward lines thereof were extended and produced through such adjoining territory; provided, that in any year in which a county superintendent of public schools is to be elected that the qualified voters of such town, city or consolidated district where registration of voters is required, must vote in the ward or precinct of which they are residents, if the place of voting has been so designated by the board of education; provided, that if there shall be any other incorporated city or town included in such school district, there shall be at least one polling place within such other incorporated city or town and said school election shall be conducted within the limits of such other incorporated city or town in the same manner as hereinbefore provided for cities or towns having a population exceeding two thousand and not exceeding seventy-five thousand inhabitants."

Under paragraph 2 of said Section 165.330 one of the propositions to be submitted to the voters of such district at the annual school meeting every four years, is the election of a County Superintendent of Schools. Said section, at the option of the board, permits the board to provide for the holding of such election at the time and place as the election for municipal officers. The section provides that said election shall be held at such convenient place or places within the district as the board may designate, with the judges and clerks of such municipal election serving as judges and clerks of said school election, but the ballots of the school election shall be on a separate piece of paper and be deposited in a separate ballot box kept for that purpose. Said paragraph 2 of said Section 165.330 is not mandatory as to one or more place or places where the voter at such election shall cast a ballot. The fixing of the place or places for voting is directory in the sense that the number of places for voting by the voters is discretionary with the board.

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The case of Armantrout vs. Bohon, an election contest case for the office of County Superintendent of Schools in Marion County, Missouri, involving the authority of the board of directors to designate one voting place in the City of Hannibal in the election for County Superintendent of Schools was considered and decided by the Supreme Court of this state, 349 Mo. 667, 162 S.W. (2d) 867. The contest for the office arose from that act of the board of directors. The contestant claimed that by designating only one place in the school district for ballots to be cast for County Superintendent of Schools, a sufficient number of voters were denied a place to vote who would have voted for contestee for said office to have elected her if sufficient voting places had been designated by the board.

The Court held that the designation by the board of one voting place in the City of Hannibal and adjacent territory comprising the school district for the annual school meeting election, which included an election of County Superintendent of Schools and the election resulting in the election of the contestee to the office of County Superintendent of Schools was valid under the terms of the statute. The Court so holding, 162 S.W. (2d) 1.c. 871, said:

"As we understand it, the appellant does not contend that any mandatory law, constitutional or statutory, was violated and we are unable to find any such violation from her allegations. The quoted statute (Sec. 10483, R. S. Mo. 1939, Mo. R.S.A. Sec. 10483) says the voting shall be 'at such convenient place or places * * * as the board may designate.' It may 'at the option of the board' be held at the same time and place as city elections are held in certain counties. But none of these provisions may be construed as mandatory. It does not appear that any city elections were being conducted at the time. There are times conceivably, when one voting place in Hannibal would be adequate for the submission of school matters to the voters of the district, although we doubt that to be the case when there is a contest over the office of county superintendent. But even so, we cannot say that the board's designation of only

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one voting place in that district was a violation of any mandatory provision of the law, even though it did not provide places easily accessible and convenient to the voters. The board may not have used the best judgment in selecting voting places but that only one place was designated, in this instance and under the circumstances, is not such an abuse of their discretion, or disregard of the election laws that the election may be invalidated for this reason. * * *

The statute on this subject then before the Court for construction respecting the authority of the board of directors of a school district to designate the voting place or places within the district where the election shall be held (Section 10488, RSMo 1939), has not been repealed or modified in that respect. The present section on the question is 165.330. It is therefore clear, considering the statutes, that the board does have the authority to designate one voting place in the school district as the district may be embraced by the territorial limits of the City of Fulton for the annual school election including the election of a County Superintendent of Schools for said Callaway County.

Considering your second question it appears that the City of Fulton is a city of the third class, having a population, according to the last decennial census, of 10,052 inhabitants.

Section 114.010 RSMo 1949 requires the registration of voters in cities of 10,000 and less than 30,000 inhabitants. Said section reads as follows:

"In all cities of the state, whether organized under general law or special charter, which now or hereafter have a population of ten thousand and less than thirty thousand inhabitants, except cities in counties where registration is now provided by law, there shall be a registration of all the qualified voters pursuant to the provisions of this chapter. The population

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of cities within the state shall for the purposes of this chapter be ascertained from and determined by the last federal decennial census."

Section 114.020, in effect states that in all such cities (those referred to in Section 114.010), elections shall be conducted in the same manner as that provided by Chapters 111 to 129, RSMo 1949, in so far as the procedure does not conflict with Chapter 114.

Section 114.020 reads as follows:

"All elections in such cities shall be conducted in all respects as provided in this chapter and subject to all the provisions of chapters 111 to 129, RSMo 1949, so far as the same do not conflict with this chapter."

Section 114.040, defines the qualifications of the voters in cities of this class and reads as follows:

"Every citizen of the United States who is over the age of twenty-one years, who has resided in the state one year next preceding the election at which he offers to vote, and during the last sixty days of that time shall have resided in the city and during the last ten days of that time in the ward or precinct at which he offers to vote, who has not been convicted of a felony or a misdemeanor connected with the exercise of the right of suffrage, who is not an idiot or an insane person and who is not kept in any poorhouse or confined in any public prison, shall be entitled to vote at such election for all officers, state or municipal, made elective by the people, or at any other election or primary held in pursuance of the laws of the state; but he shall not vote elsewhere than in the election precinct where his name is registered, and whereof he is registered as a resident unless otherwise provided in this chapter."

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Chapter 111, RSMo 1949, is in regard to the manner of holding elections generally, and Section 111.010 of that chapter specifically provides that the chapter does not apply to school elections, and reads as follows:

"The provisions of this chapter shall apply to all the election precincts in this state but shall not apply to township or village elections, to school elections, or to any city election in cities of the fourth class, or in cities of under three thousand inhabitants existing under any special law."

Section 114.010, supra, states that all qualified voters of cities having a population of not less than 10,000, nor more than 30,000 inhabitants must register, and since this section, Section 114.010, and Section 114.040 do not provide any exception to the qualifications or registration of voters, upon first thought it would appear that before a voter in a city of this class could vote in a school election for county superintendent of schools, he must comply with such statutory provisions, particularly those requiring him to register. However, it is our view that in order to vote in elections of this kind a resident of such city is not required to have been previously registered in order to vote, except in one instance which was mentioned in our discussion of the first inquiry.

It will be recalled that in the instance referred to, we stated that when under the provisions of 165.330, supra, in cities having a population between 2,000 and 75,000 inhabitants the Board of Education had designated the same voting places for a school election at which a county superintendent of schools was to be elected as those for a municipal election, when the school election was to be held in conjunction with the municipal election, that the voters were required to be registered at the ward or precinct in which they offered to vote. In all other instances it is believed that voters in such school elections are not required to be registered in order to vote for a county superintendent of schools.

The statute governing the holding of elections generally do not apply to school elections as we have already noticed from the provisions of Section 111.010, supra. This principle of law was also emphasized by the Court in the case of *Armentrout v. Bohon*, supra, in which the Court stated at l.c. 870:

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"While the general statutes relating to election contests apply to the office of county superintendent of schools the general election laws do not apply to the procedure to be followed in electing the superintendent. Article 14, Chapter 72, R.S.Mo. 1939, Mo. R.S.A. Sec. 10609 et seq. provides for such officials, their powers and duties as well as their election. * * *"

Again we call attention to Section 167.020, supra, which appears to provide a complete system for the election of the county superintendent of schools every four years. This section makes no requirement that the voters of a third, or any other class city, must have been registered in the wards of which they are residents before they shall be allowed to vote.

When the Board of Education exercises its discretion under the provisions of Section 165.330, supra, and designates a single voting place in such cities for an election at which a county superintendent of schools is to be elected, the statutory provisions relating to registration have no application, and if the voters possess the other statutory qualifications they are entitled to vote in all such elections.

In view of the foregoing and in answer to the second inquiry, it is our thought that the regular registration required of voters of a third class city in a general election does not apply to an election for a county superintendent of schools when the Board of Education has designated a single voting place for said election.

Your third inquiry is in regard to the registration requirements pertaining to school district elections within the City of Fulton, where registration is required. We have previously stated that Fulton is a city of the third class, and it is believed that the discussion and answers given to the first and second inquiries fully answers the third inquiry, hence, no further discussion will be given upon the third inquiry.

CONCLUSION

It is, therefore, considering the premises, the opinion of this office under the statutes herein noted:

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1) That a single voting place may be used by the school district at a school election held independently of a municipal election provided for by the board at which a County Superintendent of Schools is to be elected, or if such election is held in conjunction with a general municipal election for officers and the Board of Directors so designates, voting places may be designated to be in residential wards and precincts of the voters in cities of the third class which contain city school districts.

2) That all voters who are residents of a city of the third class, having a population of not less than 10,000, nor more than 30,000 inhabitants, are not required to be registered to vote at a school election at which a county superintendent of schools is to be elected, when the Board of Education of the school district of said city has designated a single voting place for such election, under the provisions of Section 165.330, RSMo 1949.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Paul N. Chitwood.

Yours very truly,

John M. Dalton
Attorney General

PNC:ma,vlw