

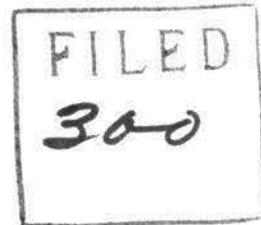
SCHOOLS:
CITIES, TOWNS
AND VILLAGES:
BONDS:
ELECTIONS:

There is no procedure which would authorize setting aside a school levy election because of a shortage of ballots.

OPINION NO. 300

July 2, 1970

Honorable Carl D. Gum
Prosecuting Attorney
Cass County Court House
Harrisonville, Missouri 64701



Dear Mr. Gum:

This is in response to your request for an opinion as to the validity of a school levy election where there was a shortage of ballots which precluded certain voters from voting.

We find no procedure under the laws of this state by which a duly authorized school levy election may be set aside because of election irregularities. The Supreme Court of Missouri has repeatedly held that a contest of an election is statutory and is dependent on express statutory authorization. See, e. g. State ex rel. Conaway v. Consolidated School District No. 4 of Iron County, 417 S.W.2d 657 (Mo. En Banc 1967). Chapter 124, RSMo 1959, provides for election contests. A review of that chapter and other statutory sections reveals no statutory provisions authorizing a contest of a school levy election. In a similar situation involving an election to authorize the issuance of general obligation bonds, the Supreme Court of Missouri held that absent statutory authorization the courts have no power to set aside an election for irregularities in the election procedure. Arkansas-Missouri Power Corporation v. City of Potosi, 355 Mo. 356, 196 S.W.2d 152 (1946).

In another case, Wann v. Reorganized School District No. 6 of St. Francois County, 293 S.W.2d 408 (Mo. 1956), the court refused to allow plaintiffs to contest a school bond election on the ground that nonqualified voters were permitted to vote. In that case it was argued that Article V, Section 14 of the Constitution of Missouri, which provides, "The circuit courts shall have . . . exclusive original jurisdiction in all civil cases not otherwise provided for,

Honorable Carl D. Gum

. . ." permitted the circuit court to hear a case contesting the election. In rejecting that argument, the court noted, l.c. 412:

"We must necessarily conclude that where the provision of the constitution announces a general principle and there is a specific direction to the legislature, as in this case, and no common law remedy exists and the legislature has not acted, then the courts are without jurisdiction to entertain a petition for relief. . . ."

Therefore, it would appear that there is no method by which a school levy election may be declared invalid because of the shortage of ballots.

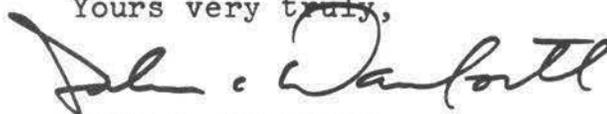
In reaching that conclusion, we note that you ask if the election is "void." The Supreme Court of Missouri has held, that even though for certain types of elections an election contest is not permitted by law, a court of equity may act in those situations where the purported "election" is unauthorized by law and therefore void. Wann v. Reorganized School District No. 6, supra. However, inasmuch as no question is raised in your opinion request concerning the election's being authorized by law, the only question being the validity of the conduct of the election, we are of the opinion that where a duly authorized school levy election has been held, there is no procedure by which a school levy election may be set aside because of irregularities in the conduct of the election such as a shortage of ballots. Therefore, the election must be held to be valid.

CONCLUSION

It is the opinion of this office that there is no procedure which would authorize setting aside a school levy election because of a shortage of ballots.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Charles A. Blackmar.

Yours very truly,



JOHN C. DANFORTH
Attorney General