

ELECTIONS:

NURSING HOME DISTRICTS:

1. It is mandatory that the board of directors of a nursing home district, which on three separate occasions refused to approve a bond issue for the construction of a nursing home, submit to the voters the proposition of the dissolution of said district. 2. Elections held prior to the enactment of Section 198.360, RSMo 1969, shall be considered as being within the provisions of this section in determining the number of elections in which the voters have refused to approve a bond issue.

OPINION NO. 304

July 20, 1971



Honorable Ronald M. Belt
Representative, District 96
108 Vine
Macon, Missouri 63552

Dear Representative Belt:

This is in response to your request for an opinion from this office as follows:

"On September 15, 1964 the Clarence Nursing Home district was created by a vote of the people. The district was created under authority of the Nursing Home Act of 1963 which is incorporated in the Statutes as section 198.200 - 198.360.

"On three separate [sic] occasions to wit: May 11, 1965; June 22, 1965; and March 21, 1967 a bond issue was submitted in the district for the purpose of construction of a nursing home. On each occasion the bond issue failed and to date no nursing home has been constructed nor is one operated by the district. They have been levying the nursing home district tax as provided in the statutes.

"Section 198.360 Revised Statutes of Missouri was enacted in 1969 and reads as follows:

'Dissolution of district.--In any nursing home district created under the provisions of chapter 198, RSMo 1967 Supp. which is not operating a nursing home, and in which the voters of said district have on

Honorable Ronald M. Belt

three separate occasions refused to approve a bond issue for the construction of a nursing home, the board of said district shall submit to the voters the proposition of the dissolution of the district. If a majority of the voters approve the dissolution, said district shall be dissolved and any tax money in the treasury shall be rebated to the original taxpayer on a pro rata basis.'

"My question is: 'Must the Nursing Home District in which the voters on three separate occasions refused to pass a bond issue prior to enactment of section 198.360 submit to the people the proposition of dissolution of the district?'"

You inquire whether the board of directors of a nursing home district in which the voters on three separate occasions refused to pass a bond issue prior to the enactment of Section 198.360, RSMo 1969, must submit to the people the proposition of dissolution of the district.

Section 198.360, RSMo 1969, to which you refer provides:

"In any nursing home district created under the provisions of chapter 198, RSMo 1967 Supp. which is not operating a nursing home, and in which the voters of said district have on three separate occasions refused to approve a bond issue for the construction of a nursing home, the board of said district shall submit to the voters the proposition of the dissolution of the district. If a majority of the voters approve the dissolution, said district shall be dissolved and any tax money in the treasury shall be rebated to the original taxpayer on a pro rata basis."

Under this section, which was enacted in 1969, the board of directors of a nursing home district which is not operating a nursing home, "shall" submit to the voters the proposition of dissolution of the district if the voters of said district have on three separate occasions refused to approve a bond issue for the construction of a nursing home. Usually, the use of the word "shall" indicates a mandate, and unless there are other things in the statutes, it indicates a mandatory statute. State ex rel. Stevens v. Wurdeman, 295 Mo. 566, 246 S.W. 189 (banc 1922).

Honorable Ronald M. Belt

It is the opinion of this office that under this statute it is mandatory that the board of directors of a nursing home district, which is not operating a nursing home, submit to the voters the proposition of dissolution of such district after the voters on three separate occasions have refused to vote bonds for the construction of a nursing home.

The question now arises as to whether this statute applies retroactively or retrospectively. That is, whether the elections held prior to the enactment of Section 198.360, supra, are to be considered or whether the elections have to be held after the enactment of this statute.

Article I, Section 13, Constitution of Missouri, provides as follows:

"That no ex post facto law, nor law impairing the obligation of contracts, or retrospective in its operation, or making any irrevocable grant of special privileges or immunities, can be enacted."

The first question to be decided is whether the legislature intended the statute under consideration to operate retrospectively or prospectively. As a general rule, statutes are construed to operate prospectively unless the legislative intent that they be given retrospective or retroactive operation clearly appears from the express language of the acts or by necessary or unavoidable implication. *Jamison v. Zausch*, 227 Mo. 406, 126 S.W. 1023, 1027 (1910); *State ex rel. Harvey v. Wright*, 251 Mo. 325, 158 S.W. 823, 829(12) (en banc 1913); *Barbieri v. Morris*, 315 S.W.2d 711, 714(4) (Mo. 1958); 82 C.J.S., Statutes, Section 414, page 981. Many cases hold that acts of the legislature must be held to operate prospectively only, unless a different legislative intention is clearly to be gathered from their terms. *Clark Estate Co. v. Gentry*, 362 Mo. 80, 240 S.W.2d 124, 129(6) (Mo. 1951);

This statute provides that any nursing home district which is not operating a nursing home and in which the voters of said district "have" upon three separate occasions refused to approve a bond issue for the construction of a nursing home, the board of directors shall submit to the voters the question of the dissolution of such district. From the language used, it is clear that the legislature intended the statute to apply to elections held prior to the enactment of this statute as well as those held subsequent to its enactment. It is our view the language used in this statute of the past tense indicates that was the intent of the legislature when it enacted the statute. *State ex rel. LeNeve v. Moore*, 408 S.W.2d 47 (Mo. banc 1966); *Barbieri v. Morris*, 315 S.W.2d 711 (Mo. 1958).

Honorable Ronald M. Belt

This leaves only the question of whether this results in the statute being "retrospective in its operation" in violation of Article I, Section 13 of the Constitution. In *Dye v. school District No. 32 of Pulaski County*, 355 Mo. 231, 195 S.W.2d 874 (en banc 1946) the court considered the effect of a statute enacted on April 23, 1943, which became effective on November 22, 1943 (ninety days after adjournment of the General Assembly), on the contract of a teacher dated April 23, 1943, to teach in a public school during the school year 1943-1944. The statute under consideration required every school board ". . .to notify each and every such teacher in writing concerning his or her re-employment or lack thereof on or before the fifteenth day of April of the year in which the contract then in force expires. Failure on the part of a board to give such notice shall constitute re-employment on the same terms * * *." Contention was made that this statute did not apply to the contract executed prior to the effective date of the statute. In discussion of this matter, the court stated, l.c. 879:

"Respondents' view is that the provision of Sec. 10342a extending a teacher's contract for another year in the circumstances stated therein operates retrospectively and changes the contract, itself, by imposing a new duty and making its term two years instead of one. We do not think so. A retrospective law is one that relates back to, and gives to a previous transaction, some different legal effect from that which it had under the law when it occurred. A statute is not retrospective merely because it relates to antecedent transactions, where it does not change their legal effect. Here, the original contract itself was not affected, and the appellant is not complaining. The new law merely imposed a statutory duty on both parties to give notice of its continuance or not. The public interest was involved. The respondents had almost five months in which to give notice after the statute became operative. It is necessary that such arrangements be made in advance. The State, with respect to its school boards, had the right to waive or impair its own vested rights, if any."

A nursing home district is a public agency created by virtue of a statute enacted by the legislature. It is similar to school districts formed under statutory provisions, and we believe the same principles of law should be applied as apply to school districts in deciding whether a statute governing the acts and the authority of a nursing home district is unconstitutional as being

Honorable Ronald M. Belt

retrospective. It is our opinion the statute under consideration does not violate Article I, Section 13, supra, of our Constitution as being retrospective when it applies to elections held prior to the enactment of such statute because it concerns a public agency in which there are no vested rights. Dye v. School District No. 32 of Pulaski County, supra; State ex rel. St. Louis Police Commissioners v. St. Louis County Court, 34 Mo. 546 (1864); Graham Paper Co. v. Gehner, 59 S.W.2d 49 (Mo. en banc 1933).

It is the opinion of this office that this statute does not violate this constitutional provision when applied to the elections held prior to the enactment of such statute. It merely relates to prior facts or transactions which existed at the time of its enactment but does not change their legal effect; it does not impair any vested right. 16 C.J.S., Constitutional Law, Section 244.

CONCLUSION

It is the opinion of this office that:

1. It is mandatory that the board of directors of a nursing home district, which on three separate occasions refused to approve a bond issue for the construction of a nursing home, submit to the voters the proposition of the dissolution of said district.
2. Elections held prior to the enactment of Section 198.360, RSMo 1969, shall be considered as being within the provisions of this section in determining the number of elections in which the voters have refused to approve a bond issue.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Moody Mansur.

Yours very truly,



JOHN C. DANFORTH
Attorney General