

August 2, 1971

OPINION LETTER NO. 345

Answer by letter-

C. A. Blackmar

Honorable Jack J. Schramm  
Representative, District 37  
7529 Gannon Avenue  
University City, Missouri 63130

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Dear Representative Schramm:

This letter is in response to your request for an opinion concerning Senate Committee Substitute for House Bill No. 28, passed by the 76th General Assembly and signed by the Governor July 17, 1971, which will become effective on September 28, 1971. The bill repeals Sections 72.080, 72.085, 72.100 and 72.130, RSMo 1969 and enacts five new sections. It provides a procedure by which unincorporated areas may become incorporated. The procedure is for a stated percentage of the electors of the area to petition the county governing body requesting that an election on the question of incorporation be held. If the petitions contain the required number of signatures, the county governing body must then call an election within a specified period of time.

You request an opinion on the question of whether signatures collected before the effective date of the law, September 28, 1971, may be counted for the purpose of determining if a petition requesting an election contains a sufficient number of signatures.

The effective date of the bill is ninety days after the adjournment of the session, Article III, Section 29, Missouri Constitution. The general rule is stated in the case of *Keane v. Cushing*, 15 Mo.App. 96, 99 (1894):

" . . . where a constitutional provision prescribes the date of which an act of the legislature shall take effect, until the arrival of that date, it has no force or validity for any purpose whatever; not even for the purpose of imparting notice of its existence. . . ."

Honorable Jack J. Schramm

In that case the City of St. Louis passed a bill authorizing the letting of a contract for a public works project. The city charter provided that no ordinance was to take effect until ten days after its passage. Another city ordinance requires that notice of the letting of city contracts be published three times in a newspaper. The city published notice with respect to the contract on three occasions, but each occasion was prior to the tenth day after the passage of the ordinance. The court held that the notice given before the ordinance was actually in effect was not sufficient notice under the statute and, therefore, declared the contract to be invalid.

In *City of St. Louis & County of St. Louis v. Alexander*, 23 Mo. 483 (1856), the City and County of St. Louis were authorized by a state statute to subscribe to the capital stock of a railroad company. The statute provided that before the subscription was authorized, the question had to be submitted to a vote of the people at an election. The statute contained no clause as to the time within which it should take effect. That being so, the statute, under the general law then in force, became effective ninety days after its passage. However, the question was submitted to a vote of the people at an election held before the expiration of that time. The vote was in favor of making the subscription. The county court thereupon made the subscription. The court held that, because the election had been held before the statute authorizing the subscription became operative, the subscription was void.

On the basis of those two decisions, we are of the opinion that signatures collected on petitions requesting an election before the effective date of Senate Committee Substitute for House Bill No. 28 of the 76th General Assembly would not be valid for purposes of having an election called to determine whether an area should incorporate.

Yours very truly,

JOHN C. DANFORTH  
Attorney General