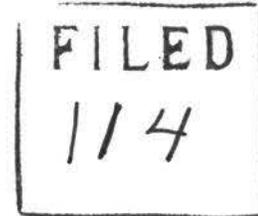


ELECTIONS: With respect to cities and counties which are
PRECINCTS: required to maintain a system of voter registra-
COUNTY CLERK: tion under Sections 114.011-114.146, RSMo
Supp. 1973: 1. Absent a specific statutory
provision to the contrary, a political subdivision conducting an
election may have a polling place outside the boundaries of the
political subdivision, provided that there is one polling place
in each precinct in the political subdivision. 2. Any time two
or more political subdivisions overlap within the same precinct
and conduct elections on the same day, they must select a common
polling place within the precinct, and the county clerk must pro-
vide the precinct registration records at the place so designated.
If the political subdivisions involved cannot agree on a common
polling place, the county clerk shall designate the polling place
for the political subdivisions. 3. If two or more political sub-
divisions within an established precinct have an election on the
same day and the districts do not overlap, the common polling
place may, if necessary, be located beyond the political bound-
aries of one or more of the subdivisions; and to the extent that
Section 162.371 or any other similar statute is to the contrary,
it is deemed to have been implicitly repealed by Sections 114.011-
114.146. If the political subdivisions involved cannot agree on
a common polling place, the county clerk shall designate the poll-
ing place for the political subdivisions.

OPINION NO. 114

March 13, 1974



Honorable James C. Kirkpatrick
Secretary of State
Room 209, Capitol Building
Jefferson City, Missouri 65101

Dear Mr. Kirkpatrick:

This official opinion is issued in response to your request for a ruling on the following questions relating to the effect of SSHCSHB No. 20, 77th General Assembly, First Regular Session (Sections 114.011-114.146, RSMo Supp. 1973), on the election laws of Missouri.

We will confine our discussion to those cities and counties where elections are governed by Sections 114.011-114.146, that is, those counties and cities which do not have boards of election commissioners. With this qualification, we answer your questions as follows, in the order in which you asked them.

Your first question is as follows:

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"1. May a political subdivision conducting an election have a polling place outside the boundaries of the political subdivision so long as there is one polling place within each precinct of the political subdivision?"

Section 114.116 directs how election districts or precincts are to be established in all counties and cities of the state, except those which have boards of election commissioners. That section provides:

"1. Election districts or precincts for that part of the county outside the corporate limits of any city, town or village, which for municipal election purposes is subject to the provisions of sections 114.011 to 114.146 shall be set by the county court. The election precincts for that part of the county within any city, town or village, which for municipal election purposes is subject to the provisions of sections 114.011 to 114.146 shall be set by the governing body of the city, town or village or by the municipal election authority, whichever the case may be.

"2. No election precinct established in any city, town or village, which for municipal election purposes is subject to the provisions of sections 114.011 to 114.146, shall encompass territory outside the corporate limits of the city, town or village, nor shall such precinct encompass territory in more than one county."

Thus, although paragraph (2) of Section 114.116 prohibits a precinct in any city, town or village from encompassing territory beyond the corporate limits of that city, town or village, or from encompassing territory in more than one county, it does not prohibit a precinct from overlapping other types of political subdivisions (such as fire protection districts, school districts, etc.).

It is, of course, necessary that one polling place be established within each precinct. As this office pointed out in our Opinion No. 116, 1974, issued to the Honorable James C. Kirkpatrick, that conclusion is required by the very definition of the word "precinct." See Opinion No. 116, page 4.

It is our opinion, then, that nothing contained in Section 114.116, or any other section of SSHCSHB No. 20 ordinarily would

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prevent a political subdivision from having a polling place outside its boundaries, provided one polling place is located within each precinct established pursuant to Section 114.116. In other words, a voter may be required to cast his ballot at a polling place outside the boundaries of the political subdivision in which he resides, but not outside the boundaries of his precinct.

However, certain statutes require that polling places be designated within the particular political subdivision. For example, Section 162.371, RSMo 1969, which deals with school district elections, provides in pertinent part:

" . . . Convenient polling places within the district shall be designated by the board for all elections. If there is more than one incorporated city or town within the school district, there shall be at least one polling place in each city or town. When a district includes any city, incorporated town or other political subdivision which holds an election on the same day on which the school election is held, the county clerk, board of election commissioners or other official having authority over general elections in the city, town, political subdivision and school district shall designate one polling place for both the school district and the city, town or political subdivision election in each precinct or district within the city, town or political subdivision and shall designate the election officials in each precinct who shall conduct the election for all subdivisions involved. The board of education shall designate polling places for voters who reside outside the corporate limits of cities, towns or other political subdivisions which hold elections at the same time as school elections." (Emphasis added).

Where such a provision exists, it will normally be controlling if no other political subdivision within the precinct is conducting an election on the same day. A different situation, however, may result where two or more political subdivisions within one precinct are holding an election on the same day. This brings us to your second and third questions. You ask:

"2. If two political subdivisions within an established precinct have an election on the

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same day, and the districts do not overlap, may the county clerk assist the subdivisions in choosing a mutually agreed upon polling place, and provide the precinct binder to both subdivisions at that polling place, even if it is outside the political boundaries of one or more of the districts?

"3. How does a county clerk comply with the provisions of SSHCSHB 20 requiring him to provide binders to political subdivisions if two or more subdivisions are having elections on the same day and encompass the same territory?

"Does a county clerk comply with statutory requirements if he furnishes both subdivisions with the precinct books at a common polling place decided upon by the subdivisions?"

The statutory scheme outlined by Sections 114.011-114.146 clearly contemplates and requires that there be only one polling place per precinct. See Opinion No. 116, pages 6-7. Therefore, whenever two political subdivisions overlap within the same precinct and conduct an election on the same day, the subdivisions must choose a common polling place within the precinct; and the county clerk may assist the subdivisions in making this selection. In the event the various subdivisions within the precinct are unable to agree upon a common polling place, the county clerk must designate a polling place as the single location to which he will send the registration records for each precinct, as required by Section 114.051(2).

Furthermore, if two or more political subdivisions conduct an election on the same day and their boundaries do not overlap, it is clear that to prohibit the establishment of polling places beyond the boundaries of the respective political subdivisions would necessitate the establishment of more than one polling place within the same precinct. This, as we have already pointed out, is neither feasible nor permissible in view of the requirements of Sections 114.011-114.146. Therefore, it is our view that Section 162.371, or any similar statutory provisions requiring voting within the boundaries of particular subdivisions, are impliedly repealed to the extent that they conflict with Sections 114.011-114.146.¹ See Opinion No. 116.

¹In some cases there may be no conflict. For example, assume a school district and another political subdivision located within

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In reaching this conclusion, we are aware that repeal by implication is not favored in the law. See Opinion No. 116, page 4. Nor are we ignoring the disclaimer contained in Section 114.136, which provides that all provisions regulating elections shall remain in effect ". . . except as modified by the provisions of sections 114.011 to 114.146." (emphasis added). However, it seems to us that the use of the phrase "except as modified" clearly indicates a legislative recognition that certain previously existing laws pertaining to elections would, in fact, be altered or amended by Sections 114.011-114.146.

In the event the various subdivisions within the precinct are unable to agree upon a common polling place, the county clerk must designate a polling place as the single location to which he will send the registration records for each precinct, as required by Section 114.051(2).

CONCLUSION

Therefore, it is the opinion of this office that, with respect to cities and counties which are required to maintain a system of voter registration under Sections 114.011-114.146, RSMo Supp. 1973:

1. Absent a specific statutory provision to the contrary, a political subdivision conducting an election may have a polling place outside the boundaries of the political subdivision, provided that there is one polling place in each precinct in the political subdivision.

2. Any time two or more political subdivisions overlap within the same precinct and conduct elections on the same day, they must select a common polling place within the precinct, and the county clerk must provide the precinct registration records at the place so designated. If the political subdivisions involved cannot agree on a common polling place, the county clerk shall designate the polling place for the political subdivisions.

3. If two or more political subdivisions within an established precinct have an election on the same day and the districts

the same precinct conduct elections on the same day and assume their boundaries do not overlap. Assume, no special statute exists which would prevent the other political subdivision from having a polling place outside its territory. Under those circumstances, the requirements of Sections 114.011-114.146 and Section 162.371 will be complied with by locating the polling place in that part of the school district's territory which is located within the precinct.

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do not overlap, the common polling place may, if necessary, be located beyond the political boundaries of one or more of the subdivisions; and to the extent that Section 162.371 or any other similar statute is to the contrary, it is deemed to have been implicitly repealed by Sections 114.011-114.146. If the political subdivisions involved cannot agree on a common polling place, the county clerk shall designate the polling place for the political subdivisions.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Philip M. Koppe.

Yours very truly,

A handwritten signature in cursive script, appearing to read "John C. Danforth".

JOHN C. DANFORTH
Attorney General