

ELECTIONS:

City Election on tax levy to be held in conjunction with general election on November 2, 1948; proposition for increase in city tax levy in St. Joseph, a first class city, for the purposes specified in Act of January 25, 1946, Laws Mo. 1945, pp. 1286-1288, may be voted upon at November General Election, and election machinery provided for general election may be utilized, including election judges and clerks:

October 11, 1948.

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Honorable William B. Norris, Jr.,  
Assistant Prosecuting Attorney and  
Legal Adviser to the County Court,  
County Courthouse,  
St. Joseph, Missouri.

10-13

Dear Sir:

We have your letter of September 14, 1948, in which you request an opinion of this department. Your letter is as follows:

"Under the provisions of the Act approved January 25, 1946, (Laws of Missouri, 1945, Pages 1286-1288), all cities of the 1st. class are authorized to levy annually not to exceed 30 cents in the aggregate on the 100 dollars assessed valuation upon all property subject to its taxing powers for any one or more of the following purposes: library, hospital public health, recreation trounds and museum purposes, when such rate and purposes of increase are submitted to a vote of the qualified electors within such cities and a majority voting thereon shall vote therefor, and empowers the common councils of any such cities to call and conduct a special election under the laws governing such as herein contemplated and to submit thereat a proposition for increase of levy at either a special or regular election.

"The common council of the City of St. Joseph is proposing under the authory so conferred to submit two propositions, one for a Garbage disposal program and the other for museum purposes on November 2, 1948 and to utilize the same voting places in each ward and each precinct and, if possible, the same judges and clerks as are used in the general election held on that date. The manner of selection of judges and clerks to serve at elections held in cities of the first class for city purposes differs, of course, from the manner of appointment of such officials to serve at elections held under the general elections laws of the State. In this connection reference is made to section 6254 of the Revised Statutes of Missouri 1939 for the selection

of Judges and Clerks to serve at elections held for city purposes in Cities of the 1st class and to sections 11502 and 11504 regarding the appointment of judges and clerks under the general election laws of the state.

"It is imperative of course that no action should be taken which would in any way endanger the legality of the general election of November 2, 1948 and I would appreciate receiving at your earliest convenience your opinion regarding the following questions:

"(1) Is there any statute, state or federal which in your opinion would prevent the special election mentioned and the general election being held at the same time and at the same voting places?

"(2) May the common council legally select and appoint the same judges and clerks to serve at the special election as are appointed to serve at the general election?

"(3) If so, may such judges and clerks legally serve at the same time and places in dual capacities and receive remuneration from both the City and the County for such services?

"(4) Would the holding of the two elections in question at the same time and places and with the same judges and clerks in any way affect the regularity or validity of the general election of November 2, 1948, provided the general election laws of the state are observed?"

The Act of January 25, 1946, Laws of Mo. 1945, pp. 1286 - 1288, contains among other provisions the following: "The city council of any such cities is hereby empowered to call and conduct a special election under the laws governing such elections as herein contemplated, and to submit thereat a proposition for increase of levy, when, in the opinion of such city council, the necessity therefor arises, and may submit any such proposition at either a special or regular election.\* \* \*" (Underscoring ours.)

We construe the above language to mean that the city council is empowered to follow either one of two courses: (1) It may submit the proposition for an increase in the levy to the voters of the city at a general election, such as the election to be held on November 2, 1948. If it follows this course it is not necessary for the county court either to appoint judges and clerks or to pro-

vide for their compensation, because they have already been appointed in accordance with the terms and provisions of the law applying to general elections. In other words, the Legislature in the aforesaid Act of June 16, 1946, by using the words "and may submit any such proposition at either a special or regular election" made the regular state election, otherwise known as the general election, available to the city for the purpose of obtaining a vote of the people on the increase of the tax levy for the designated purposes.

It is pertinent at this point to call attention to the fact that the term "regular election" has been held by the Supreme Court of Missouri to mean the same as the term "general election." In this connection we quote the following from State of Mo. ex rel. Attorney General, Relator v. Christian Conrades, 45 Mo. 45, l.c. 47: "When applied to election, the terms "regular" and "general" have been used interchangeably and synonymously. The word "regular" is used in reference to the general election occurring throughout the State.\* \* "

(2) The Legislature also by using said language empowered the city council to call a special election on a different day and in different polling places from the day upon which and the polling places in which the general election is to be held, in which event, of course, it would become necessary to select judges and clerks and provide for their compensation, in accordance with the provisions of the statutes applying to elections of that character.

However, since the city council of St. Joseph plans to submit the intended propositions to the voters of St. Joseph at the general election, as it is given the right to do by the foregoing statute, it is unnecessary to call a special election for the purpose or to provide judges and clerks therefor, or to provide for the compensation thereof. In considering this construction it is important to distinguish between the term "general election" and the term "special election". The weight of authority is that the term "special election" refers to an election held on a date other than the date of the general election. This principle is clearly set forth in the case of Dysart v. City of St. Louis, 321 Mo. 514, l.c. 532, in which the court discussed a similar situation in the following language: "The proposition may be submitted at a 'general election'. It does not say that a special election is to be called on a general election day". Quoting further from the same opinion, l.c. 533, we find the following: "The theory that a proposition, other than election of officers, submitted on the day of a general election is a 'special election', leads to absurd results. Some propositions or amendments are submitted by referendum, some by initiative and some by proclamation of the Governor, etc. If each were a special election we might have a dozen elections on the same day, administered by the same judges and clerks, and the voter would vote in a dozen elections; in several of them

possibly on a single ballot, and the vote on all of them deposited at one and the same time."

Quoting still further from said opinion, l.c. 530, we find the following statement in the opinion of the court: "Respondent contends that a special election is one which takes place at a time different from an election provided for by general law; an election which must be specifically called. This view is supported by what has already been said"; and again quoting from said opinion we set forth the following, l.c. 534: "\* \* \* but the weight of authority favors the definition that a special election means one taking place at a time different from that at which an election is fixed by law".

We believe that the above-quoted language of the Supreme Court thoroughly demonstrates the fact that a proposition such as the proposed proposition in the minds of the councilmen of the City of St. Joseph when submitted at a general election becomes a part of that election and does not become a part of a special election, for the reason among others that a special election is defined by the weight of authority as an election held on a day other than the day of the general election.

We further believe, by reason of the aforesaid provision of the Act of January 25, 1946, that the council of St. Joseph has the right to submit these propositions at the general election rather than at a special election.

#### CONCLUSION.

We are, therefore, of the opinion that the City Council of St. Joseph, by proper ordinances, may submit the proposition for an increased tax levy to the voters of St. Joseph at the November 2nd General Election, and in so doing is not calling a special election, but is availing itself of another alternative provided by statute, namely, the submission of the question at a regular rather than a special election, and that in so doing it cannot provide additional clerks, because the clerks at the general election are otherwise provided for and have the authority and the duty under the election law to conduct the receiving and the recording of the votes on the said propositions.

In answer to your question 1 in your request for opinion, we are of the opinion that the election on the propositions submitted by the city will not be a special election, but will properly be a part of the general election.

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In answer to your question 2, we are of the opinion that there is no necessity for the common council to select any judges and clerks, and that it cannot do so because the judges and clerks in the general election will have been already provided. Our answer to your question 2 also answers your questions 3 and 4.

Respectfully submitted,

SAMUEL M. WATSON  
Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
Attorney General

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