



STATE OF KANSAS

Office of the Attorney General

1st Floor, State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

Curt T. Schneider
Attorney General

May 16, 1977

ATTORNEY GENERAL OPINION NO. 77-157

Mr. Jay Don Reynolds
Gray County Attorney
Cimarron, Kansas 67835

RE: Public recreation and playgrounds; petition; election.

Synopsis: The three days' prematurity of an election on a petition to establish a public recreation system amounts to an irregularity only, and does not justify a conclusion purely as a matter of law that the election is void.

* * *

Dear Mr. Reynolds:

You have inquired whether failure to file a petition for establishment of a supervised recreation system more than 30 days in advance of the date of election invalidates the tax levy authorized by the election outcome.

K.S.A. 12-1904 clearly requires that when a petition for establishment of a recreation system and the levy of an annual tax to support it is filed with the clerk of the city or school district, the question is to be submitted to the voters at the "next regular or special election of the city or school district to be held more than thirty (30) days after the filing of such petition." Thus, the statute does not authorize the holding of an election prior to 30 days after the filing of the petition. If an action had been brought prior to April 5 on the ground that the election was premature, the court might well have granted relief. However, the election has now been held, and its validity must be considered under the rule applicable to elections generally. In Dunn v. Board of County Comm'rs of Morton County, 165 Kan. 314, 194 P.2d 924 (1948), the court stated thus:

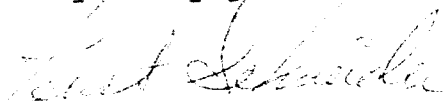
Mr. Jay Don Reynolds
May 16, 1977
Page 2

"It is well settled that mere irregularities in conducting an election which do not cast any uncertainty on the result, do not, in the absence of fraud, require rejection of the entire vote."
165 Kan. at 329

Nothing in the fact that the election was held three days prematurely casts any uncertainty on the result of the election, or raises any doubt as to its integrity as full and fair expression of the wishes of the people. In many cases, the Kansas Supreme Court has held that failure to publish notice of a special election for the full time required by law is a fatal defect which renders the election void. See, e.g., Eberhardt Construction Co. v. Board of County Comm'rs, 100 Kan. 394, 164 P. 281 (1917). Here, however, it is not suggested that the notice of the special election was not timely published ten days prior to the election, as required by K.S.A. 25-105. Thus, the fact that the election was held three days prior to the time fixed by statute does not affect the notice which was furnished the electorate, and it raises no suggestion that the outcome was in any way affected by the date of the election. The fact that the election was held on the same date as the city and school elections itself suggests the likelihood that a greater number of the qualified electors participated in it than would have had the special election been conducted on a different date. To this extent, the special election appears to be an even fuller and more accurate expression of the people's will than might have been had otherwise.

In short, in my judgment, the three days' prematurity of the election is no more than an irregularity, which had no effect on the outcome of the election, and which does not justify a conclusion purely as a matter of law that the election is void. In my judgment, the fairness and integrity of the election as an expression of the voters' will is not affected by the three days' prematurity, and the levy authorized by the voters is a lawful and valid result of the election.

Very truly yours,



CURT T. SCHNEIDER
Attorney General

CTS/ERH/cgm