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## The Legality of Concurrent General and Special Elections

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## THE LEGALITY OF CONCURRENT GENERAL AND SPECIAL ELECTIONS

The system of elections in the United States is not of common-law origin, but is entirely statutory, and the exercise of the right of suffrage is regulated in all states by constitutional and statutory provisions.<sup>1</sup> Thus the problem as to whether or not special and general elections may legally be held on the same day and at the same place is one primarily of statutory determination in the United States.

What are the distinguishing features of the two types of elections? A general election is said to be one which occurs at stated intervals, as fixed by law, and which occurs at stated intervals without any superinducing cause other than the efflux of time; a special election is one that arises from some exigency or special need outside of the usual routine, such as to submit to the electors a measure or proposition for adoption or rejection.<sup>2</sup>

Coming back to the problem as to whether or not special and general elections may be held at the same time and place, American Jurisprudence states, "Although under some constitutional and statutory provisions it is held that a general and special election may be held upon the same day and at the same place, it has been said that the weight of authority favors the definition that a special election is one which takes place at a different time from that at which an election fixed by law is held, and that the submission of special propositions at such an election does not convert it into a special election."<sup>3</sup> From this quoted matter it is indicated that special and general elections, by some rulings, may be held on the same day and at the same place. As to the latter part of the quotation, "that such an election does not convert it into a special election" there is considerable doubt. The court in *Dysart v. St. Louis*<sup>4</sup> substantiates this by saying, "It is a matter of common knowledge that at nearly every general election, propositions are authorized and submitted to the voters as special propositions. Submission of these propositions are not, in common parlance, called special elections. They are merely votes on special propositions submitted at a general election." But many, and it would seem the majority, of the cases hold contra and adhere to the view that special propositions presented at general elections are nevertheless special elections. In *Furste v. Gray*<sup>5</sup> the Kentucky court follows this line of reasoning by holding that the time for holding an election to fill a vacancy in the General Assembly may be fixed for the same day as the general election, and this does not prevent it from being a "special election."

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<sup>1</sup>18 Am. Jur., Elections, § 2.

<sup>2</sup>Supra, § 5.

<sup>3</sup>Ibid.

<sup>4</sup>321 Mo. 514, 11 S. W. (2d) 1045, 62 A.L.R. 762 (1928).

<sup>5</sup>240 Ky. 604, 42 S. W. (2d) 889 (1931).

It has been held, also, that the submission of a proposed amendment to a city charter constituted a "special election," although it was not so designated by the city council, and although it was submitted at the same time as the general election.\* This is a next-door-neighbor case from Minnesota, where the ballots containing the sole question as to whether this single amendment should be adopted were submitted to the voters on general election day. The court had no difficulty in construing the acceptance of the amendment as being a special election. In view of Chapter 238, Laws of Minnesota, 1903, it is obviously the intention of the Legislature, according to the court, that, when an amendment to the city charter is submitted at the same time as a general election such as that held in the instant case in 1932, the voting on the amendment shall be considered a special election. The statute refers to "both elections," and it cannot be otherwise construed.

A proposition as to issuance of bonds by the South Park Commissioners of Illinois, a municipal corporation empowered to maintain, improve, and develop parks and boulevards, was voted on at the same time as the general city, county, and state election. The court held that this did not change the character of the bond issue election, and it was nevertheless a "special election."

In *Norton v. Coos County*<sup>4</sup> one finds another case relating to issuance of bonds. The only election authorized within the scope and title of the Oregon Laws of 1913<sup>5</sup> related to special elections to determine issuance of bonds and warrants. A road bond election, though held on the same day as a general election, was nevertheless a "special election" within the meaning of section 11 of the said Act, providing that "only one special election shall be held in one county in any one year." Therefore, a subsequent road bond election during the same year was unauthorized and void.

So, too, holds *Wilson v. Wasco County*,<sup>6</sup> another Oregon case, in deciding that a road bond election is a special election in character, although held on the same day as the general election. Still another Oregon case<sup>7</sup> sanctions this principle, holding that where an initiative measure to move the county seat was voted on at the general election, it was as to the initiative measure a "special election." In *People v. Czarnecki*<sup>8</sup> it was held that an election to fill a vacancy in the office of a state senator was a "special election," although held on the same day as a general election.

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\**Godward v. City of Minneapolis*, 190 Minn. 51, 250 N. W. 719 (1933).

<sup>4</sup>*George G. Renneker Co. v. South Park Com'rs*, 322 Ill. 393, 163 N. E. 786, 788 (1928).

<sup>5</sup>113 Ore. 619, 233 Pac. 664, 866 (1925).

<sup>6</sup>Ore. Laws 1913, c. 103, p. 170.

<sup>7</sup>83 Ore. 147, 163 Pac. 317 (1917).

<sup>8</sup>*Hill v. Hartzell*, 121 Ore. 4, 252 Pac. 552, 555 (1927).

<sup>9</sup>312 Ill. 271, 143 N. E. 840, 841 (1924).

Kentucky," Washington," and Montana" express approbation of the principle under discussion.

It is seen, then, that there is authority for these two propositions: (1) general and special elections may be held on the same day; (2) an election is nevertheless "special" although held at the same time as a general election.

What is the North Dakota law? A case decided in 1909<sup>16</sup> indicates that in a strict, legal sense, although the vote on a change in county boundaries is cast at a general election, this is the holding of a "separate election,"<sup>17</sup> notwithstanding that it was held in connection with the general election for convenience, to save expense, trouble, and time, which would be wasted in holding a special election, and because there is a better attendance of voters at general elections than at most special elections, and thus likely to be a more complete expression of the preference of the electors. This case cites *State ex rel. McCue v. Blaisdell*,<sup>18</sup> decided a year previously, wherein the court held that electors might express their final choice for a United States senator at the general election; this as a matter of convenience, and to save expense. Such choice was voted at the same time and place, and conducted by the same officers, as at the general election.

Notice might also be had of the law in North Dakota dealing with issuance of bonds for municipal corporations wherein Section 10, Chapter 196 of the 1927 Laws of North Dakota, reads as follows: "The ballot for such an election shall be separate from other ballots on the same day for other elections. . . ." May one not fairly presume from this statement alone that a special and general election may be held on the same day and at the same place in North Dakota?

But of course a condition precedent to the validity of dual elections is that they be properly noticed as required by law. In *Corpus Juris* it is stated: "Statutes giving directions as to the mode and manner of conducting elections will be construed by the courts as directory unless a noncompliance with their terms is expressly declared to be fatal, or will change or render doubtful the result. If the statute simply provides that certain acts or things shall be done at a particular time or in a particular manner with-

<sup>16</sup>*Houston v. Boltz*, 169 Ky. 640, 185 S. W. 76, 77 (1916): An election for the issuance of bonds for the construction of public roads was none the less a "special election" although held on the same day as the general November election.

<sup>17</sup>*State v. Superior Court for King County*, 71 Wash. 484, 128 Pac. 1054, 1055, Ann. Cas. 1914C, 591 (1913): An election to fill the vacancy on a district bench is a special election, though held on the same day of the general election.

<sup>18</sup>*State v. Kehoe*, 49 Mont. 582, 144 Pac. 162, 165 (1914): An election to fill a vacancy although held at the same time as the general election, is a "special election."

<sup>19</sup>*State ex rel. McCue v. Blaisdell*, 18 N. D. 31, 119 N. W. 360 (1909).

<sup>20</sup>"Separate" is no doubt used in the sense of "special," as this word is so used later in the opinion of the case.

<sup>21</sup>18 N. D. 55, 118 N. W. 141 (1908).

out declaring their performance is essential to the validity of the election, they will be regarded as mandatory if they effect the actual merits of the election, and directory if they do not. Where the terms of the statute are absolute, explicit, and peremptory no discretion is given; and when penalties are imposed against the violation of its respective terms they have the same effect as negative words and render its observance imperative. . . ."<sup>20</sup>

In *Marsden v. Harlocker*<sup>21</sup> it is said that in all general elections, the time, place and manner of holding which are prescribed by law, the rule is well-settled that electors must take notice thereof, and as a corollary to this legal principle any requirements for the issuing of proclamations or the giving of other notice in respect to such elections must be treated as directory only. In the case of special elections, however, all the statutory requirements as to proclamations or other means of giving notice are considered as mandatory and must be observed in order to render the vote of the electors participating therein valid.

The reasons for this rule are obvious. Suffrage is a civil right to which qualified persons are entitled. If the election, being general, occurs at regular intervals, by operation of law, these persons are presumed to have knowledge thereof. But where some local project is under consideration, the propositions are special, and qualified voters cannot be presumed to have knowledge thereof, unless the statutory requirements are complied with.

Undoubtedly the rule in North Dakota is that elections must be properly noticed so as to comply with the law, and this may be seen in *Perry v. Hackney*,<sup>22</sup> wherein it is said that the conduct of elections is mandatory.

Thus, in concluding, and in view of the apparent trend of authority in North Dakota, and in view of Chapter 196, Section 10 of the 1927 Laws of North Dakota, a special proposition may be voted on legally in North Dakota at the same time as the general election, if there is proper noticing, conducting of election, and balloting.

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<sup>20</sup>20 C. J., Elections, § 223.

<sup>21</sup>48 Ore. 90, 85 Pac. 328, 120 Am. St. Rep. 786 (1906).

<sup>22</sup>11 N. D. 148, 90 N. W. 483 (1902).