

1997 WL 47285 (Miss.A.G.)

Office of the Attorney General
State of Mississippi

Opinion No. 97-0022

January 24, 1997

Re: Notice of a Referendum Election

Hon. William H. Austin, Jr.

Dear Mr. Austin:

Attorney General Mike Moore has received your request for an official opinion of this office and has assigned it to me for a reply. Your letter is attached for reference and incorporated herein.

In your letter you state that Senate Bill 3173, local and private legislation enacted in 1996, authorized the assessment and levy of a convention tourism promotion tax for the purpose of providing funds for acquiring property for construction and maintenance of a civic center. The law requires that the Board of Supervisors shall adopt a resolution declaring the intention to levy the tax, the amount of the tax and establish that a referendum election will be held on the question of levying the tax. In addition, notice of the intention to hold such a referendum election shall be published once a week for at least three consecutive weeks in a local newspaper, with publication not less than 21 days, nor more than seven days prior to the date set for the election.

You also state that the DeSoto County Convention and Visitors Bureau requested the levy, the DeSoto County Board of Supervisors adopted a resolution on the matter and called for an election on the question as required by the local and private legislation. Following the adoption of the resolution, a newspaper published in DeSoto County, *The DeSoto Times*, carried numerous articles and advertisements relating to the proposed tax and the referendum election. These news articles set forth the Board's intent, the date, time and place of the election, reporting all the information required by Senate Bill 3173. However, notice of the intention to hold the election was not formally published in the legal advertising section of the newspaper. The election was held and the tax levy was approved by a 60.55% majority vote.

Your letter states that the Board is satisfied that actual notice was provided to the public by the numerous articles and advertisements appearing in *The DeSoto Times*. You further state that the Board is of the opinion that this represents only a technical irregularity and that it was merely a deviation from the standard practice and it did not prevent the expression of the public's will. You specifically inquire:

Whether such an irregularity in the manner of publication of notice is fatal thereby rendering the results of the referendum election null and void.

It appears that the spirit of Senate Bill 3173 was followed, if not the letter of the law. The law required that notice of the intent to hold the referendum election, and the particulars of that election be conveyed to the citizenry

by way of publication for at least three consecutive weeks in a local newspaper. That was accomplished by the numerous news articles published in the local newspaper. In fact, an argument more people probably had notice of the election through the news articles than would have through a legal notice.

*2 The Mississippi Supreme Court has held:

if a statute does not expressly declare that a particular act is essential to the election's validity or that omission of the particular act will render the election void, the statute is considered directory rather than mandatory, so long as the irregular act is not intended to affect the integrity of the election. [citations omitted].

[Rogers v. Holder](#), 636 So. 2d 645, 647-648 (Miss. 1994). See also [Walker v. Smith](#), 213 Miss. 255, 56 So. 2d 84 (1952).

If the DeSoto County Board of Supervisors makes a determination that sufficient notice was given pursuant to the requirements of Senate Bill 3173, it is the opinion of this office that any defect in the form of the notice would not invalidate the referendum election and the results thereof.

If this office can be of any further assistance, please let us know.

Very truly yours,
Mike Moore
Attorney General

Sandra M. Shelson
Special Assistant Attorney General

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