Local Option--Effect of Election in County upon Prior Election Held in Municipality Within the County

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LOCAL OPTION—EFFECT OF ELECTION IN COUNTY UPON PRIOR ELECTION HELD IN MUNICIPALITY WITHIN THE COUNTY.

Perhaps the most important problem connected with the question of local option pertains to the territory affected by a vote held under the authority conferred by our constitution and statutes. The importance of this problem results from the fact that the voting units, usually counties, often contain smaller divisions which are opposed to the result reached in the unit as a whole. Thus, a “dry” county may contain a “wet” town, or a “wet” county may embrace a “dry” town. As a general rule, our urban population is more prone to vote against prohibition than is the rural population; and it is this phase of the problem which will be dealt with here. The question, then, is: May a town or city remain “wet”, although the county in which it is situated has adopted the local option law?

The Kentucky Constitution provides:

"The General Assembly shall by general law provide a means whereby the sense of the people of any county, city, town, district or precinct may be taken as to whether or not spirituous, vinous or malt liquor shall be sold, bartered or loaned therein, or the sale thereof regulated. Nothing herein shall be construed to interfere with or to repeal any law in force relating to the sale or gift of such liquors. All elections on the question may be held on a day other than regular election days."

The pertinent statutes are:

"Upon application by a written petition filed with the clerk of the county court of any county signed by the number of legal voters in said county, or any city, town, district or precinct thereof to be affected, equal to twenty-five (25) per cent of the votes cast in said territory at the last preceding general election, it shall be the duty of the judge of the county court of such county at the current or the next regular term of said court thereafter to make an order on the order book of said court directing an election to be held in such county, city, town, district or precinct to be affected thereby, for the purpose of taking the sense of the legal voters of such county, city, town, district or precinct upon the proposition whether or not spirituous, vinous, or malt liquor shall be sold, bartered, or loaned therein."

Additional statutes concerning the problem at hand provide: "No election in any territory less than the county shall be held on the same day on which an election for the entire county is held" and "No election shall be held in the same territory oftener than once in every three years."

Although there may be some doubt in view of the statutes alone, the cases are clear that where a county votes in favor of local option, a city within this county may not within three years thereafter vote.

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1 Ky. Const. § 61.
2 Ky. Stat. (Carroll, 1936), Sec. 2554c-2.
3 Ky. Stat. (Carroll, 1936), Sec. 2554c-4-c.
4 Ky. Stat. (Carroll, 1936), Sec. 2554c-4-d.
and the vote of the county as a whole will control within the city. This conclusion is a logical interpretation of the phrase "in the same territory" as used in the above statute, and therefore fault may not be found with it. Thus is precluded the right of the municipality to hold an election subsequent to one in the entire county, and thus is prevented one possibility of a "wet" town in a "dry" county.

There is an express prohibition in the statutes relative to simultaneous elections in county and city. As above set forth, it is specifically provided: "No election in any territory less than the county shall be held on the same day on which an election for the entire county is held."

But one possibility remains. If a municipality votes against "local option", will the force of this election withstand a subsequent vote in favor of "local option" in the entire county? In this regard, the statutes are not explicit, and we must turn to judicial decisions and other considerations for the answer. It is conceivable that the statutory prohibition against succeeding elections within the same territory within three years of each other together with the decisions holding that an attempted vote in a subdivision of a county within three years from the time when the entire county had held an election was an election within the same territory and therefore prohibited would point to the logical converse conclusion that where a town has voted "wet", a subsequent vote for local option in the entire county would not be operative within the "wet" town, if the elections were held within three years of each other. Notwithstanding that this is the logical conclusion, there is some doubt as to whether it is the law in Kentucky.

Where the result of the election in the smaller division has been in favor of prohibition, a subsequent election in the larger division within three years resulting against prohibition has been held to have no effect upon the status of the territory involved in the first election. However, where the election in the smaller division terminated in a "wet" result, a subsequent election in the entire county favoring the adoption of local option was held to nullify the effect of the prior election, but the statutes in effect at that time and under which the elections were held permitted cities of the first four classes to vote in a separate election upon the same day as the county election, and since the "wet" town, Georgetown, was a fourth class city, and did not, by calling a simultaneous and separate election on the same day, signify its intention to remain wet, it was held to have been controlled by the result in the election of wider scope. Under the present statutes, not only is the provision for simultaneous election

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*Ky. Stat. (Carroll, 1936), Sec. 2554c-4-c.
*Commonwealth v. Botts, 22 K. L. R. 410, 57 S. W. 493 (1900).
*Smith v. Patton, 103 Ky. 444, 45 S. W. 459 (1898); Taylor v. Cook, 147 Ky. 215, 143 S. W. 105 (1906).
*Yates v. Nunnelly, 125 Ky. 664, 102 S. W. 292 (1907).
absent, but in addition there is an express prohibition against this very thing.\textsuperscript{11} Since this city could have remained “wet” by holding a simultaneous election, and since the provision for a simultaneous election was omitted from and prohibited by the present statute, there is a strong indication that the Legislature intended the prior election to control.

Perhaps the strongest authority for the proposition that a subsequent election in the county would supersede one held in a city located therein is the case of The Trustees of the Town of New Castle v. Scott.\textsuperscript{12} In that case, New Castle, a fifth class city, had voted “wet”. Within three years thereafter, the entire county voted “dry”. Since New Castle was not one of the first four classes of cities, the statute did not allow it a simultaneous vote, and it was not therefore guilty of “sleeping on its rights” as was Georgetown in the above discussed case. It was, nevertheless, held that the county election would control. In that opinion it was said: “Each local unit should have the privilege of saying conclusively that prohibition should prevail, but not conclusively that it should not.” This proposition was based upon several considerations. One of these was that the section of the Constitution authorizing the Local Option Statutes stated specifically: “Nothing herein shall be construed to interfere with or to repeal any law in force relating to the sale or gift of such liquor”, thus referring to the special acts of Local Option in effect in various districts throughout the state prior to the passage of the uniform Local Option Statutes.\textsuperscript{13} This constitutional provision precluded the possibility of holding that subsequent “wet” vote in a county would supersede a “dry” vote in a part of the county, and thus laid the foundation for the first part of the proposition quoted above. That part setting forth that a unit smaller than a county could not conclusively say that prohibition should not prevail was based upon the theory that the county, and not the town or city, is historically and actually the true unit of government. However, the reasoning employed to sustain this theory involved a comparison of the county and a precinct thereof. While it is true that a precinct could hardly be said to be a more complete governmental unit than the county, yet by the standards of 1937 the town or city more nearly conforms to this requisite than does the county. If either the town or the county is to be given preference as being the more complete in governmental function, the former merits the choice. Since the matter has not been decided under our present statutes, and since the better reasoning seems to favor a result contrary to that reached in the case under discussion, it is submitted that should a municipality vote against Local Option, a subsequent vote by its county within three years favoring Local Option would have no effect upon the municipality.

\textsc{Sam Milner.}

\textsuperscript{11} Ky. Stat. (Carroll, 1936), Sec. 2554c-4-c.
\textsuperscript{12} 30 K. L. R. 894, 101 S. W. 944 (1907).
\textsuperscript{13} Ky. Const., § 61.