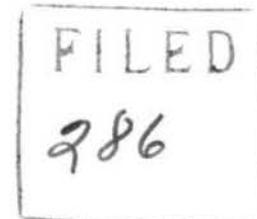


VOTING: In a county which has provided for voter
ELECTIONS: registration, under the provisions of
ELECTION JUDGES: Chapter 114, RSMo, "The Local Option
Registration Law": (1) That pursuant to
Section 114.220(3), RSMo Supp. 1967, a person registered in a
precinct in which he offers to vote, may not be challenged on
the day of election solely on the basis that his residency is
actually in another precinct; (2) It is further the conclusion
of this office that the requisites to registration set out in
Section 114.050, RSMo 1959, except those of precinct residency,
may be inquired into by challenge on the day of election.

OPINION NO. 286

October 23, 1969

Honorable Roderic Ashby
Prosecuting Attorney
Mississippi County Courthouse
Charleston, Missouri 63834



Dear Mr. Ashby:

This is in reply to your request for an opinion asking what authority election judges have pursuant to Section 114.220, RSMo Supp. 1967, to deny a voter the right to vote in a precinct when such voter is registered in such precinct in a county which has adopted registration under provisions of Chapter 114, RSMo, the "local option" registration law. In effect, you ask whether the election judges can determine if a person is not qualified to vote if said person's name appears on the registration books of the precinct where he offers to vote.

As you have noted, the pertinent section involved here is Section 114.220(3), RSMo Supp. 1967, which states as follows:

"3. Any registered voter, when he offers to vote, may be challenged by any registered voter of the election precinct where he offers to vote; except, that he may not be challenged solely on the basis of registration if he is registered in the precinct in which he offers to vote. The judges of election shall try and determine, in a summary manner before the polls close, the qualifications of the challenged persons. Upon proof of the disqualifications of the

Honorable Roderic Ashby

person challenged, the judges shall reject his vote and state his disqualifications and the names of the witnesses upon whose testimony his vote was rejected opposite his name on the registration record. No person's vote may be rejected except upon the testimony of two credible witnesses and until the challenging person shall swear before the judges of election at the time of challenging that to the best of his knowledge and belief the person challenged is not a qualified voter and the reasons that disqualify him. The rejected ballot shall be preserved and returned with the books and other ballots in a separate envelope marked 'rejected ballots'."

As can be noted, a person offering to vote may have his right to vote challenged by any registered voter of the election precinct where the vote is offered. A person's vote is not to be rejected, however, until the challenging person shall swear before the judges of the election that to the best of his knowledge and belief the person challenged is not a qualified voter and states the basis for disqualification. Additionally, a person's vote may not be rejected by the judges except upon the testimony of two credible witnesses.

If a basis for disqualification is stated and sworn to, it then becomes incumbent upon the judges of election to try and determine in a summary manner before the polls close the qualifications of the challenged person.

Specifically, you inquire as to the meaning to be ascribed to the exception clause of Section 114.220(3), which states:

" * * * except that he may not be challenged solely on the basis of registration if he is registered in the precinct in which he offers to vote."

It is the view of this office that the meaning to be ascribed to this provision is that a person offering to vote in a precinct in which he is registered may not on the day of election be challenged solely on the basis that his actual residence is not in such precinct, but is in some other precinct. Thus, it would appear that the intention of the legislature was to withdraw as a basis for challenge on election day the fact that a person duly registered in the precinct does not, in fact, reside in said precinct. As will be noted in (1) and (2) of Section 114.220, the procedure is

Honorable Roderic Ashby

set out by which precinct residency may be tested, to wit: In (1) by written challenge filed with the county clerk at least 21 days before the election; In (2) by challenge filed with the Circuit Court between the 10th and 20th day preceding any election.

It would appear, however, that the legislature did not intend to remove all bases of challenge on the day of election; and therefore, it is our conclusion that any of the requisite qualifications to registration set out in Section 114.050, RSMo 1959, except that of precinct residency, may validly be inquired into by a challenger on the day of election.

CONCLUSION

It is the conclusion of this office that in a county which has provided for voter registration under the provisions of Chapter 114, RSMo, the "Local Option Registration Law":

(1) That pursuant to Section 114.220(3), RSMo Supp. 1967, a person registered in a precinct in which he offers to vote, may not be challenged on the day of election solely on the basis that his residency is actually in another precinct;

(2) It is further the conclusion of this office that the requisites to registration set out in Section 114.050, RSMo 1959, except those of precinct residency, may be inquired into by challenge on the day of election.

The foregoing opinion, which I hereby approve, has been prepared by my assistant, Kenneth M. Romines.

Yours very truly,



JOHN C. DANFORTH
Attorney General