

IN RE: House Bill No. 639 relating to registration of voters
in towns of 10,000 to 30,000 inhabitants. *Laus 33*

June 5, 1933. *6-9*

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Buxton & Skinner Printing and Stationery Co.,
306-308 North Fourth Street,
St. Louis, Missouri.

Attention: Mr. R.M. Kendrick

Gentlemen:

At the request of Governor Park, this department
writes you in reply to your letters of May 29 and June 1,
1933.

Sec. 2, Art. VIII of the Constitution of the State
of Missouri as amended by the Constitutional Convention
February 26, 1924 and approved by the voters, provides as
follows:

"All citizens of the United States,
including occupants of soldiers' and
sailors' homes, over the age of twenty-
one years who have resided in this state
one year, and in the county, city or town
sixty days immediately preceding the elec-
tion at which they offer to vote, and no
other person, shall be entitled to vote at
all elections by the people; provided, no
idiot, no insane person and no person while
kept in any poor-house at public expense or
while confined in any public prison shall be
entitled to vote, and persons convicted of
felony, or crime connected with the exercise
of the right of suffrage may be excluded by
law from the right of voting."

Sec. 3 of House Bill No. 639 provides as follows:

"Every male and female citizen of the
United States, and every person of foreign
birth who shall have declared his intention to
become a citizen of the United States accord-
ing to law, not less than one year or more than
five years before he offers to register, who
is over the age of 21 years, who has resided in
the State one year next preceding the election

at which he offers to vote, and during the last 60 days of that time shall have resided in the city, and during the last ten days of that time in the ward or precinct at which he offers to vote, who has not been convicted of bribery, perjury or other infamous crimes affecting his franchise, nor directly interested in any bet or wager depending upon the result of the election, shall be entitled to vote at such election for all officers, state or municipal, made elective by the people or at any other election or primary held in pursuance of the laws of the State; but he shall not vote elsewhere than in the election precinct where his name is registered, and whereof he is registered as a resident unless otherwise provided in this article."

It is apparent that the constitutional provision and Sec. 3 of House Bill 639 as to qualifications of voters, conflict. The provisions of Sec. 3 of said bill in so far as they conflict with Sec. 2 of Art. VIII of the Constitution are unconstitutional and inoperative. Sec. 3 authorizes persons to vote who have declared their intention to become a citizen of the United States not less than one year or more than five years before offering to register. The language in Sec. 2, Art. VIII is mandatory and limits the right to vote to citizens of the United States, including occupants of soldiers' and sailors' homes over twenty-one years of age, residing in this state one year and in the county, city or town sixty days immediately preceding the election at which they offer to vote, and no other person shall be entitled to vote at any election by the people.

The unconstitutional form in which Sec. 3 of House Bill 639 is drawn does not, however, invalidate the whole of the bill because the matter of the qualification of voters was not the principal object or inducement the Legislature had in passing House Bill 639. The objective sought by this bill was the matter of registration of voters in towns of 10,000 to 30,000 inhabitants. Our Supreme Court in State ex rel v. St. Louis, 241 Mo. 247, said:

"We are cited to a case (Skagi County v. Stiles, 10 Wash. 388) holding that where a part of the law is bad the presumption is generally that the whole is bad. Such a presumption I think of doubtful existence and of little value if existing at all. To the contrary we approach the constitutionality of a law with a strong, even a violent, presumption it is valid. Its invalidity must be made to appear beyond a reasonable doubt and every

allowable art, part and act of judicial power should be exercised in so interpreting the law, if possible in reason, that none of it perish by construction. But if that be impossible and some of it, through inherent vice, must perish, do not the separable and independent parts of the law still stand protected by the presumption of validity attending the whole law at the outset? Why not? To a little alter and use of simile of Lord Hobart (Malever v. Redshaw, 1 Mod. 35), which I have had occasion to use before in another form, a judge is not to be like a tyrant, making all void when part is void, but like a nursing father, making void only that part where the fault is and preserving the rest if he can."

We call your attention to the fact that under the general provision in the general election law of the state relative to qualifications of voters, Sec. 10178 R.S. of Mo. 1929, the same defects appear as occur in Sec. 2 of House Bill 639. This department is of the opinion, however, that the provisions of Sec. 2, Art. VIII of the Constitution are operative and self-enforcing in so far as qualifications of voters are concerned, and that all those who are eligible under said section and article of the Constitution as qualified voters of the state are legally eligible to register and to vote under the provisions of House Bill 639 in cities and towns of 10,000 to 30,000 inhabitants.

A comparison of the registration books and registration lists of poll books provided for by Sec. 4 of House Bill 639 with the provisions of Sec. 10542 R.S. of Mo. 1929 providing for registration in cities of 10,000 to 100,000 inhabitants discloses that the form provided by each of the two sections is identical. It is true that there is no "column" in the form provided in Sec. 4 of House Bill 639 for recording the nature of the disqualifications and the names of the witnesses upon whose testimony the rejected voter's vote was rejected. Sec. 4 contains no provision therefor, but Sec. 7 does provide as follows:

*****And it shall be the duty of the judges of the election to try and determine, in a summary manner, before the close of the polls, the qualifications of any person challenged as aforesaid and upon proof that the person so challenged is not a qualified voter, the judges of election shall reject his vote and they shall state, opposite the name of the person on the registered list of voters whose vote is rejected, the nature of his disqualifications and the names of the

Witnesses upon whose testimony his vote was rejected; but the vote of no person who may be challenged may be rejected except upon the testimony of two credible witnesses. ***"

The rule of law is that a statute should be construed so as to ascertain and give effect to the legislative intent expressed therein. Our Supreme Court has said with reference to a partly invalid statute and the constitutional provision in State ex inf. v. Duncan, 265 Mo. 27, that

"Where the entire statute is not built around the unconstitutional part, but that part is separable from the rest, the invalid part may be cut away, and the hiatus filled with a self-enforcing constitutional provision pertaining to the same subject; and if the valid part of the statute and the self-enforcing constitutional provision together constitute a workable plan, things done in pursuance thereto will be upheld."

Again our court has held "rules for interpretation of statutes are manifestly intended to aid in ascertaining the legislative intent rather than to control such intent or to confine the operation of a statute within narrower limits than was intended by the Legislature." The legislative intention evidently was as disclosed by the above quotation from Sec. 7 to have a record made of the rejection of a voter and that the record should be made opposite the name of the person on the registration lists of voters and that it should state the nature of his disqualification and the names of the witnesses. Section 7 commands that this shall be done.

We are therefore of the opinion that space should be left in the books and lists to make the notation required as to rejected voters. We do not hold that any one will be authorized to add another column to the form provided by statute, but it is our opinion that space should be left to make the notation of rejected voters as required by Section 7 of House Bill 639. Statutes should receive a sensible construction such as will affect the legislative intent.

State ex rel Gass v. Gordon, 266 Mo. 394.

Referring to Section 13 of House Bill No. 639, we find provision made for notification of death of voter or conviction of felony or misdemeanor connected with the right of suffrage to be given by method named to registration board and provision for cancellation of registration of deceased or convicted voters. Section 13 is to be construed in the light of Section 11 of said bill, which provides that the clerk of the court where parties are tried and convicted of penitentiary offenses

in the county in which such city is located shall furnish monthly to the city clerk, who is clerk of the board of registration, the names of all persons from such cities convicted of any crime, the punishment of which is confinement in the penitentiary, and their place of residence, and those who have been convicted likewise of a misdemeanor connected with the right of suffrage.

Turning now again to Sec. 13, it is provided that if cause is not shown "by the ~~deceased~~ convicted individuals as to why his or her name should not be stricken from the registration, the board should cancel the registration of the voter and mark same "deceased" or "convicted", as the case may be. It is evident that the Legislature intended that after the voter's name on the registration books, if he died, the word "deceased" should be written, and if convicted of a felony or crime or misdemeanor connected with the right of suffrage, the word "convicted" should be placed opposite his name.

This department is therefore of the opinion that there should be space upon the registration books for carrying out the provisions of Secs. 11 and 13. This department construes House Bill 639 to mean that the book signed by the voters in registering shall be the original book and that a copy thereof alphabetically arranged for each election shall, on the day before the election, be delivered by the board of registration to the judges of election.

This department has no method of determining what is meant by the phrase "the registration books and registration lists of poll books as hereinafter provided to be delivered to the judges of election" except from the terms of House Bill 639 itself, and whether correct or not, this department is inclined to the opinion that the "registration lists of poll books" refer to the copies of registration books provided by Sec. 18 to be delivered with the original registration book to the judges of election.

It is the opinion of this department that Sec. 10197 found under the head of General Provisions in the general election laws, Chapter 61, Article II, R.S. of Mo. 1929 is not the only section of the statutes setting forth the form of the poll books. The language of Sec. 4, House Bill 639, lines 13, 14 and 15 is as follows:

"The registration books and the registration lists of poll books as hereinafter provided to be delivered to the judges of election shall be in the following form:"

(Buxton & Skinner)

-6-

We think the words "poll books" refer to the books to be used by the judges of election and to be kept by said judges and clerks of election on election day.

Respectfully yours,

EDWARD C. CROW.

APPROVED:

ROY McKITTRICK,
Attorney General