

OFFICERS, SOLDIERS AND MARINES: Right to vote in Missouri.

November 3, 1933

10178 R S. 1929 No 1929



Honorable Ray L. Kay
Prosecuting Attorney
Moniteau County
California, Missouri

Dear Sir:

Your request for an opinion dated October 16, 1933,
was as follows:

"Colonel John A. Paeglo who is soon to be placed on the retired list of Officers of the United States Army has asked me if he will be entitled to vote after retiring from active Service IN the army.

Does the provision, or exception, in section 10178 R. S. 1929 "That no officer, soldier or marine in the Regular army or navy of the United States, shall be entitled to vote at any election in this state" apply to officers in the Reserve Corps or Officers on the Retired list, or does it mean only those engaged in active service of the Army and Navy? I presume it all depends on the construction placed on the word 'IN'. I also assume that officers of the Reserve Corps and on the Retired list are officers of the United States army or navy. Will you please give me your opinion on this matter."

Section 2, Article 8, of the Missouri Constitution was adopted February 26, 1924 and 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 election 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."

Section 9, Article 8, of the Missouri Constitution provides as follows:

"Qualified electors absent from the state on military or naval service shall, and qualified electors absent from their counties but within the state may, be enabled by law to vote at general or special elections."

Section 10178 R. S. of Mo. 1929, provides as follows:

"Every male citizen of the United States and every male person of foreign birth who may have declared his intention to become a citizen of the United States according to law, not less than one year nor more than five years before he offers to vote, who is over the age of twenty-one years, possessing the following qualifications, shall be entitled to vote at all elections by the people; First, he shall have resided in the state one year immediately preceding the election at which he offers to vote; second, he shall have resided in the county, city or town where he shall offer to vote at least sixty days immediately preceding the election; and each voter shall vote only in the township in which he resides, or if in a town or city, then in the election district therein in which he resides: Provided, however, that no officer, soldier or marine in the regular army or navy of the United States, shall be entitled to vote at any election in this state; and provided further, that no person while kept at any poorhouse or other asylum at public expense, except the soldiers' home at St. James and the confederate home at Higginsville, nor while confined in any public prison, shall be entitled to vote at any election under the laws of this state; nor shall any person convicted

of felony or other infamous crime, or of a misdemeanor connected with the exercise of the right of suffrage, be permitted to vote at any election unless he shall have been granted a full pardon; and after a second conviction of felony or other infamous crime, or of a misdemeanor connected with the exercise of the right of suffrage, he shall be forever excluded from voting."

Section 11, Article 8, of the Constitution of 1875 provides as follows before the 1924 amendment above set out became the law:

"No officer, soldier or marine, in the regular army or navy of the United States, shall be entitled to vote in any election in this State."

This section of the Statutes disfranchising officers, soldiers and marines was based upon a constitutional disfranchisement of those falling in that classification prior to the 1924 amendment to the Constitution, but it is to be noticed that when the people in Missouri voted to amend the Constitution they provided in the amendment, now section 2, article 8, of said Constitution, that occupants of soldiers' and sailors' homes were bona fide electors, and also by their amendment, now section 9, article 8, of the Constitution, the people provided that electors absent from their county wherein they maintain their residence, on military or naval service, may vote an absentee ballot if the Legislature sees fit to set up the procedure.

Section 10178 R. S. Mo. 1929 was enacted pursuant to the Constitution as it existed prior to 1924 and in the exact language of the Constitution of 1875 as above set out, but since the constitutional amendment changing our fundamental law as originally enacted in 1875, this above section so far as it pertains to the disfranchisement of officers, soldiers and marines from voting in this State, is, in our opinion, unconstitutional, and our Supreme Court would so declare it, if presented with a case in point.

When the people of Missouri spoke by their ballot, amending the Constitution of 1875, which provided that officers, soldiers and marines were disfranchised along with inmates of lunatic asylums and inmates of poorhouses, the people in the amendment provided that occupants of soldiers' and sailors' homes are bona fide electors, and they further provided for the counting of absentee ballots of electors absent from their county but within the State on an election day. Since officers, soldiers and marines are electors for voting an absentee ballot, and ^{since} they are electors if residing

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siding in soldiers' and sailors' homes, it is our opinion that they are electors for the purpose of voting a resident ballot.

It is our opinion that one engaged in any branch of the military or naval service, active, or in reserve or retired, is an elector in Missouri, and as such is entitled to vote as any other qualified elector when presenting himself at the polls for that purpose.

Respectfully submitted.

WILLIAM ORR SAWYERS
Assistant Attorney General

APPROVED:

ROY McKITTRICK
Attorney General.

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