

ELECTION: Weeks Bill.

August 3, 1933. 8-4

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Hon. James A. Waechter  
Chairman  
Board of Election Commissioners  
208 South Twelfth Boulevard  
St. Louis, Missouri

Dear Sir:

This is to acknowledge your letter of July 31st, 1933, which reads as follows:

"Your Mr. HornBostel, under date of July 22, 1933, in answer to an inquiry from this Board, advised it as follows: (last paragraph, page 3)

'\*\*However, so that no fraud may be perpetrated, and in order to be on the safe side, we are of the opinion that a person, in order to vote, should be a registered voter and vote where registered. If only those persons who are registered are permitted to vote, then, only registered voters will decide the issue and no question may ever be raised that persons not entitled to vote had a hand or a part in something that it was the duty of the voters to decide. In other words, the result will reflect the will of the registered voters.'

In your letter, dated July 26, to the Kansas City Election Board, the opinion seems to conflict as regards who may be eligible to vote, with the opinion given this Board as quoted above.

What this Board desires to know now is just which of your opinions it is to follow.

For your information, we might say that the practice here, since 1916, has been to permit registered voters to be transferred from one precinct to another, or from one ward to another, at any time prior to ten days before the date of any special election. This course we propose to continue to follow, inasmuch as it is based on the opinion of Judge Cave of the Circuit Court in the case of State ex rel Thomas F. Keane vs. Board of Election Commissioners, and we feel that if we deny any voter the privilege of transferring, we would be compelled to permit such voter to do so upon his taking proper action in the Circuit Court.

Inasmuch as this Board has a limited time within which to prepare and print instructions for the Judges and Clerks, for their guidance on election day, we would appreciate an answer to this letter by return mail."

You state in your letter of July 31st, that there is an apparent conflict in the opinion rendered by this Department on July 22nd, to you, and one rendered to the Chairman of the Board of Election Commissioners of Kansas City, July 26th, and you desire to know which to follow.

We can readily understand that you might come to the conclusion there is a conflict in the two opinions but a close comparison of them will actually reveal none. In the paragraph to which you refer it would appear that only registered voters are entitled to vote and we apparently made no specific provision for the voters who are unregistered, who might be permitted by the Constitution to vote, or having changed their place of residence would not be entitled to vote, because of not being registered. With the exception of this portion we think that our opinion to you is identical in its findings with the one rendered to Kansas City. At this time we shall supplement our opinion to you and enlarge and clarify it to the end there will be no doubt on the subject.

The first question that presents itself is, just what will the people vote upon or for and is this a "special election" or an "election"? The Weeks Bill terms it a "special election" and uses such words ("special election") several times in the act. But the people in the state will not vote to repeal the Eighteenth Amendment. They will only vote for delegates who favor or oppose the Amendment which repeals the Eighteenth Amendment. After the delegates have been elected they will convene in Convention and vote the way they are pledged and their vote will carry out the wishes of the majority

of the people who nominated (or elected) them; the way a delegate will cast his vote will be known to the people in advance.

The "special election", so termed, is only a method to amend the Federal Constitution. In the case of *Hawke v. Smith*, 253 U. S. 221, Mr. Justice Day in delivering the opinion of the Court said the following:

"This article makes provision for the proposal of amendments either by two-thirds of both houses of Congress, or on application of the legislatures of two-thirds of the States; thus securing deliberation and consideration before any change can be proposed. The proposed change can only become effective by the ratification of the legislatures of three-fourths of the States, or by conventions in a like number of States. The method of ratification is left to the choice of Congress. Both methods of ratification, by legislatures or conventions, call for action by deliberative assemblages representative of the people, which it was assumed would voice the will of the people. Etc. "

In the present instance Congress has stated the method of ratification; that method being by convention and not by legislative ratification. This is the first time Congress has provided for amending the Constitution by convention; we quote from the case, *supra*:

"All of the amendments to the Constitution have been submitted with a requirement for legislative ratification; by this method all of them have been adopted."

The Ohio Supreme Court in *State ex rel. Thomas J. Donnelly v. George S. Meyers*, cited July 12th, 1933, and being yet unprinted, No. 24269, said the following:

"In our opinion action in calling of such a convention is but a step necessary and incidental to the final action of the convention in registering the voice of the state upon the amendment proposed by the Congress. The action of the legislature in performing this function rests upon the authority of Article V of the Constitution of the United States. It is a Federal function, which in the absence of action by the Congress, the state legislature is authorized to perform. (*Leser v. Garnett*,

258 U. S. 137; Smiley v. Holme, 265 U. S. 335). The mode of assembling the convention set up in Amended Senate Bill No. 204 provides for a vote by all the electors of the state upon the selection of all the delegates. The views of the candidates for election as delegates to the convention will be known in advance, so that the final action of the convention should be truly representative of the will of the people upon the one special question involved. The intent of Article V of the Constitution of the United States will therefore be effectuated by this action of the state legislature."

Thus, when considered in the light that this is not an "election" but is simply a step necessary and incidental to the final action of the convention composed of delegates, then the procedure for electing delegates is the only problem that confronts us.

The Weeks Bill provides,

"In all other respects, such special election in every precinct in this state shall be conducted under the provisions of the election laws of this state insofar as such laws will apply, etc."

It is necessary that this provision be kept in mind. The act (Weeks Bill) does not provide or say what the qualifications of a voter shall be and in order to determine same we must look to the statutes and Constitution to ascertain their qualifications.

Section 10582, R. S. 1929, (quoted from in opinion to you) provides who shall be entitled to vote. Under our general election laws for cities a citizen, having all the necessary qualifications, will not be permitted to vote in an election unless he registers. The duty of registration (in St. Louis City) is placed upon the eligible voters and is a prerequisite to vote. However, by being registered does not mean a voter is eligible to vote, his right may be challenged, and if the judges find he is disqualified such voter would be precluded therefrom even though his name appears on the registration books. You are familiar with the qualifications of a voter and we will not again state them. If one does not possess the necessary qualifications he would not be entitled to vote, neither would he be permitted to register. Thus, the voter's qualifications and registration are independent and separate of each other but both must be present in order for him to vote in an

election in a city. In many counties registration is not necessary in order for one to vote. In the City of St. Louis it is. Thus in some instances registration is prerequisite in order for one to vote, and in other instances not. The statutes clearly state that in St. Louis the vote of no one shall be received by said judges whose name does not appear on said register as a qualified voter (Section 10612). However, in the present instance the election shall be conducted under the provisions of the election laws of this State insofar as such laws will apply. We do not believe the Legislature intended to (or could) disenfranchise voters in the coming election (if they possess the necessary qualifications) solely because they are not registered. The primary purpose of registration in a city is two-fold: first, to determine a voter's qualifications, and, second, place him in a ward where he may cast his vote.

If a voter is on the registration books in a ward and he still resides therein, such person should be permitted to vote in that ward and not be permitted to vote in some other ward in which he does not reside. You readily understand that this is not in a strict sense an election, yet the election laws govern so far as practicable; it of necessity means the relaxing of part of the laws to meet the conditions and exigencies without abrogating them entirely. We are speaking of procedure and our opinions deal with same in that they are not to be applied literally and strictly in the casting of one's vote, it being our opinion that all persons eligible to vote have the right to express their choice for the delegates. If a person is on the registration books and he goes to his precinct and asks for a ballot, he should be given one, unless challenged, and if a person desires to vote and is not on the registration books the judges have the right of inquiry as to whether he possesses the qualifications of a voter, to-wit, age, residence and citizenship, and if a voter has such he should be entitled to vote. You now see that the election laws apply insofar as practicable. If one's name appears on the registration books the presumption is that he is eligible to vote. However, it does not follow that all persons eligible to vote in this election are on the registration books. If the judges be satisfied that a person whose name does not appear on the registration books is entitled and qualified to vote, they should not bar him from so voting.

We quote from our previous opinion:

"The judges of election are in complete power and control over matters coming up during an election and it is up to them to determine whether one is entitled to vote."

August 3, 1933.

As to your statement that registered voters will be permitted to be transferred upon the registration books from one ward to another, which you propose to continue, is your prerogative.

Yours very truly,

James L. HornBostel  
Assistant Attorney-General.

APPROVED:

ROY McKITTRICK  
Attorney-General.

JLB:EG