

- ELECTIONS: (1) Board of election commissioners cannot continue to receive applications for erasure of names after Monday noon, October 19, 1936 under Section 10596, RSMo 1929;
- (2) Board of Election Commissioners or any two members do not have power to order recanvass of Kansas City or Portion thereof under Section 10568, RSMo 1929.

October 23, 1936.

Honorable Fred Bellemere, Chairman,
Board of Election Commissioners,
Kansas City, Missouri.



Dear Sir:

This department acknowledges receipt of your letter of October 21 relating to the registration and election laws governing the City of Kansas City. Your letter is as follows:

"From time to time up to and including Monday, October 19th, 1936, at noon, there had been reports of fraudulent registration called to the attention of the Board of Election Commissioners by the public press of Kansas City and by the Republican organization. Each of these reports have been carefully investigated by the Board of Election Commissioners and in cases where the registrants were not found at the addresses where registered, an application to have the name erased was filed by the Board in accordance with the provisions of our statutes.

"The question now arises as to what procedure the Board should take on reports of alleged fraudulent registration made from now to election day, and what right, if any, the Board has to erase names from the registers after October 19th, 1936.

"There has been a request made the Board for a recanvass of parts of Kansas City and it is claimed by some that under Section 10568 any two members of the Board have power to order and conduct such recanvass. We desire an opinion on this section."

Under Section 5 of Article VIII of the Constitution of Missouri it is the duty of the Legislature to provide laws governing the registration of voters in counties and cities of certain population. The purpose of such registration is not to deny the right of suffrage to any one, but it is a regulation of that right--not a qualification. Of course, the primary purpose of registration laws is to prevent fraud. Registration permits the ascertaining by the Board of Election Commissioners of an authentic list of the qualified electors. Every statute pertaining to registration and voting should be construed so as to give the voter the fullest opportunity to have his name placed upon the register, consistent and reasonable with precautions against fraudulent registration and voting.

Section 10567, R.S. Mo. 1929 creates a board of election commissioners and along with other statutes, defines the duties and powers of the commission. We deem a board of election commissioners to be an administrative body with judicial functions but with no greater power than those enumerated in the statutes. *Pike v. Megoun*, 44 Mo. 491; 20 C.J. 85, Sec. 59.

As a general rule, election laws must be liberally construed in aid of the right of suffrage. *State ex rel. v. Hough*, 193 Mo. 615.

It is further stated in the case of *Nance v. Kearbey*, 251 Mo. 374 that:

"The right to vote is not a vested natural right in a strict sense, yet it is a constitutional right in those citizens possessed of enumerated constitutional qualifications."

And again, in the same case, the Court said:

"A constitutional right to vote may not be so regulated by statute as to be entirely abrogated or lightly denied."

With these principles and decisions in mind, we think that the statutes relating to registration and voting, insofar as the rights of suffrage are concerned, should be liberally construed and in most instances said statutes are directory in nature and not mandatory, as was said in the two cases styled "*State v. Brown*", 33 S.W. (2nd) 105 and 109.

The first question which you present is in substance - What is the effect of the time of filing applications for erasing names on the register as provided for in Section 10596, R.S. Mo. 1929? Does this statute contain provisions for the elector asserting his own right to register? Is it a statute in which the elector is demanding that he be given the right to register and thus become a legal voter? Our interpretation of this section is that it is not a right given to the elector himself to assert his legal rights to vote, but rather it is a right given to other persons who challenge the right of the elector to register and thereby become a legal voter. The pertinent part of said section is as follows:

"Applications to said commissioners for the purpose of erasing a name on the register must be made by filing the same in the office of the board at any time before twelve o'clock noon on the Monday of the second week before election, and a docket shall be made in the order of the wards and precincts. The commissioners shall sit to hear such applications, commencing on the Thursday of the second week before such election and continuing with the exception of Sunday until all of such applications are heard and decided. Such sitting shall commence at eight o'clock a.m., and continue to ten o'clock P.M. on each and every of such days with intermissions between twelve o'clock noon, and one o'clock P.M. and five o'clock and six o'clock P.M., on each and every of such days. The application shall be heard in the numerical order of the wards and precincts. Upon the failure of the person to appear in person before the board to answer the application to erase his name from the register at the time it is reached for hearing, the application shall be allowed, unless a majority of the board shall decide otherwise; but in the event of the appearance in person it shall require the action of a majority of the board to allow the application. The decision on each application shall be announced at once, after hearing, and a minute made thereon in the docket. Where the application to erase a name shall

be allowed the board shall
cause the same to be erased
forthwith. * * * "

Section 10595, R.S. Mo. 1929 should be noted in connection
with Section 10596, said section 10595 being as follows:

"Any voter or voters in the ward
containing such precinct may make
application, in writing, before
such board of election commission-
ers, to have any name upon such
register of any precinct in the
ward erased; which application
shall be in substance in the words
and figures following:

I (or we).....do
hereby solemnly swear
(or affirm) that I (or we)
believe that..... is not
a qualified voter in the
.....precinct.....ward
of the city of.....and
hence I (or we) ask that
his name be erased from
the register of such precinct.

But it shall be a misdemeanor to
sign or cause to be so filed any
such application to have erased any
name lawfully upon any such register,
unless the person signing such
application had then cause to fairly
justify him in a belief that the
name ought to be erased from such
register. Such application shall
be signed and sworn to by the
applicants, and filed with said
board. Thereupon, notice of such
application, with the demand to
appear and show cause why his
name shall not be erased from
said register, shall be personally
served upon such person, or left
at his place of residence, named
in such registry, by a messenger
of said board of commissioners; as
to the manner and time of serving

such notice, such messenger shall make affidavit; said messenger shall also make affidavit of the facts in case he cannot find such person or his place of residence, and that he went to the place named on such register as his place of residence, which affidavit shall be sufficient evidence of due notice. Such notice shall be served at least one day before the time fixed for such party to show cause. Said commissioners shall also cause a like notice or demand to be sent by mail, duly stamped, and directed to such person to the address upon such registry, at least two days before the day fixed in said notice to show cause."

Reiterating in part the substance of Sections 10595 and 10596, it would appear that after a person has been registered according to the provisions of Chapter 61 of Article 17, Revised Statutes of Missouri 1929, any qualified voter can apply, in writing, to the board if he have cause to fairly justify him in the belief that such voter's name ought to be erased. The person whose name is challenged, or whose name is requested to be erased, receives personal notice of the same and the board fixes a certain day for hearing after the service of the notice. As an added precaution, the board mails a notice to such person.

The first portion of Section 10596 states, "Must be made by filing the same in the office of the board at any time before 12 o'clock noon on the Monday of the second week before election." Therefore, the question resolves itself into whether or not the board is to disregard the time mentioned in said section and continue to receive applications up to and including the day of election, or is it the mandatory duty of the board to follow the terms of the statute and refuse to receive and hear applications filed after Monday noon, October 19, 1936?

The case of State ex. inf. Attorney General v. Lamar, 316 Mo. 721, the Court said:

"A statute specifying the time within which a public officer is to perform an official act is directory unless the nature of

the act or the language of the statute shows a limitation of the officer's power."

Regarding the terms of mandatory and directory statutes, we think the rule is well stated in the case of Granite Bituminous Paving Co. v. McManus, 144 Mo. App. 593:

"Whether a statutory requirement is mandatory or directory depends on its effect. If no substantial rights depend on it and no injury can result from ignoring it, and the purpose of the Legislature can be accomplished in a manner other than prescribed and substantially the same results obtained, then the statute will generally be regarded as directory, but if not, it will be mandatory."

Regarding the word "must", if the statute contains the word, the case of Kansas City v. J.I. Case Threshing Machine Co., 87 S.W. (2nd) 195 states as follows:

"The words 'may', 'must', and 'shall' are used interchangeably in statutes without regard to their literal meaning and are to be given effect which is necessary to carry out intention of Legislature as determined by ordinary rules of construction."

In the case of Warrington v. Bobb, 56 S.W. (2nd) 835, the Court said:

"In determining whether statute is directory or mandatory, the prime object is to ascertain legislative intention, disclosed by statutory terms and provisions in relation to object of legislation."

And again,

"Statutory provisions relating to essence of thing to be done, that is,

matters of substance, are 'mandatory' while provisions, compliance with which is not matter of substance, are generally 'directory'."

In the case of Mead v. Jasper County, 18 S.W. (2d) 464, the Court said:

"A statute fixing the time within which official acts regarding the rights and duties of others is merely directory, unless the nature of the act or phraseology of the statute otherwise require."

We are impressed with and inclined to apply the logic reasoning and law as contained in the case of State ex rel. v. Mason, 144 Mo. l.c. 508-509, to the instant question. In that case the Court said:

"In Illinois, where the act required registration to be complete by the third Tuesday before the election, it was held constitutional; the court remarking: 'If it be admitted, that the Legislature can require a voter to establish his qualifications before election, it is difficult to see why, upon principle, or as a question of power, it can not require such proof to be made, as well three weeks before the day of voting as ten days, or five days, or even one day prior thereto. The real question, involved in the objection, is, whether any man can be prevented from voting who proves, or offers to prove, on the day on which he seeks to cast his ballot, that he is a legal voter. If cases can be supposed, where the 'three weeks' requirement will deprive qualified electors of the privilege of depositing their votes,

cases can also be supposed, where one day's requirement will work the same result. This mode of reasoning carried out to its logical sequence, will make any kind of a registry law unconstitutional. For it would be a physical impossibility for the judges of election to receive the votes and make up the registry at the same time and on the same day.' People ex rel. v. Hoffman, 116 Ill. l.c. 614."

Furthermore, we think that Sections 10595 and 10596 confer privileges and rights on persons to challenge or have the name of a prospective voter erased, and for that reason Section 10596, as to the time fixed for the filing of the applications as mentioned in Section 10595, is mandatory and the same constitutes a limitation on the power of the board to receive and act on said applications after the time mentioned in said section.

Conclusion

Any person who has the legal qualifications should not be denied the privilege of registering and voting. The law should clothe him with every right and protection and permit him to have an unhampered privilege of registering his sentiments for or against any question or candidate. It is our opinion that statutes which deal with the individual rights of the electors should be liberally construed and technicalities of a trivial nature should be disregarded and the statute treated as directory. But when the right of a person to register or vote is challenged and some person is seeking and attempting to take away or deprive another of one of his most sacred privileges, we think such statutes should be construed as being mandatory and that one who challenges another's right to register and become a qualified voter should be compelled to comply strictly with the terms of the statute - that the Legislature intended that challenges and applications for erasure of names should cease at noon Monday, October 19, 1936, otherwise, it would not have used the words "must be made by filing the same in the office of the Board at any time before 12:00 o'clock noon on the Monday of the second week before election.

Section 10586, R.S. Mo. 1929 sets forth the time, duties and manner in which the registration must be made and the same is conducted during the sixth week prior to the election. Thus, elapses a period of more than four weeks within which any voter

is privileged to challenge the right of another voter to be duly registered. Realizing and knowing that in a city so populous as Kansas City, the Board of Election Commissioners would have many of such applications, the Legislature saw fit to limit the time in order to give the Board ample time in which to pass on the merits of such applications and not encumber and burden the Board with such duties just prior to the election. The Legislature, realizing that much time would be consumed and that much time was necessary to pass on each application, fixed the time within which the Board should begin passing on the applications by stating: "Commence on the Thursday of the second week before such election and continue with the exception of Sunday until all such applications are heard and decided."

It would be almost a physical impossibility for the Board to carry out its multiple duties in connection with the election and at the same time be constantly receiving applications for erasure of names even unto the day of the election, and it is the opinion of this department that the Board of Election Commissioners cannot receive application for erasure of names after Monday noon, October 19, 1936.

II

Your second question requests an interpretation of Section 10568, R.S. Mo. 1929 as to whether or not said section empowers the Board of Election Commissioners, or any two members thereof, to order and conduct a recanvass of a section of Kansas City.

Section 10568 is herewith quoted in order that we may analyze the meaning of the intention of the Legislature in enacting the same:

"Any two members of the board of election commissioners shall have power to appoint before or upon any day of registration or election such number of deputy commissioners, who must be qualified voters in the city, as they may deem necessary, to be divided equally between the two political parties for the purpose of taking a census of and ascertaining the facts and conditions relative to the residence and voting right of persons in any election precinct or precincts; and to attend and be present at and during any registration, revision of registration or election, to witness and report to

the board of election commissioners any failure of duty or any fraud or irregularities occurring thereat; and to act as judges or clerks in any precinct in place of absent, removed, or disqualified judges or clerks; and to do and perform any and all acts which the said board or any two members thereof shall direct. Whenever any such deputy shall deem it necessary to have police protection in making any investigation or in performing any duty, he may demand of the chief, captain, sergeant, or other persons having command of the police that a policeman be furnished to accompany him and protect him in his duties, and it shall be the duty of such officer or person so having command to furnish a policeman for the purpose. If any person shall refuse or fail to answer questions or give any information possessed by him which may be asked for by any such deputy in the discharge of his duties, such person shall, upon conviction thereof, be deemed guilty of a misdemeanor and punished by a fine of not more than one hundred dollars. The deputies shall receive the sum of five dollars per day for services while actually employed."

No appellate court has ever undertaken to interpret the above section; hence, we must glean the purport of the section by its own provisions and its relation, if any, to the other sections in Article 17, Chapter 61 of the Statutes. It is our opinion that it has no relation to, nor should it be considered in connection with Section 10596, same being the section to which our ruling in your first question is referable.

Under the provisions of Section 10567, dealing with the creation of the Board of Election Commissioners and the duties of the same, said Board is empowered to employ such assistants from time to time as to promptly and correctly perform the duties of the office under the direction of the Board. We think the assistants mentioned in the section refer to those employed at the office regularly and whose duties consist mainly in office routine matters in connection with the registration.

In order that the Board may have additional assistance and as an added precaution, in order to prevent fraudulent registration and voting, the Legislature saw fit to permit additional appointments of deputy election commissioners under Section 10568, R.S. Mo. 1929. The duties of said deputy election commissioners are: (1) To take a census of and ascertain the facts and conditions relative to the residence and voting right of persons in any election precinct or precincts; (2) to attend and be present at and during any registration, revision of registration or election; (3) To witness and report to the Board of Election Commissioners any failure of duty or any fraud or irregularities occurring thereat; (4) To act as judges or clerks in any precinct in place of absent, removed or disqualified judges or clerks; (5) To do and perform any and all acts which the said board or any two members thereof shall direct.

It is well to carry in mind the provisions of Section 10569, R.S. Mo. 1929 wherein the Board is directed to divide the city into election precincts and rearrange the same at least six months before each presidential election. The duties of the Board mentioned in said section involve accumulation of much data and many investigations, and it is reasonable to assume that one of the principal duties of the deputy election commissioners is to collect data which will aid the Board in carrying out the provisions of Section 10569--in fact, we think that practically all the duties of the deputy election commissioners are to assist the Board in connection with the duties of the Board under Section 10569, R.S. Mo. 1929.

However, in addition thereto, said deputy commissioners are to assist the Board in any matter which the board shall direct during registration or on election day, and to detect and investigate fraud occurring at any time. The provision to do and perform any and all acts which the Board or any two members thereof shall direct refers, we think, to specific or individual investigations and duties which in the opinion of the Board should be done in order to conduct a legal and orderly registration and election. They are the clerks, agents, assistants and servants of the Board.

As we interpret the statute, taking into consideration the provisions of all the other statutes relating thereto, it cannot be read into the statute that the Board or any two of its members has the broad power to make a wholesale canvass of the city or portions thereof. At the direction of the Board, through the deputy election commissioners, every person suspected of fraudulent registration or voting, all instances of fraud--in fact, every individual act on the part of a judge, voter or registrant, may be investigated, but we cannot read into the statute the power of the Board, with one stroke of the pen, to canvass all or a portion of the city without regard to the rights of those who have been legally registered.

The Legislature has seen fit to enact statutes governing registration and voting in cities of the population of Kansas City which contain the complete procedure and which, if followed correctly and assiduously, will prevent fraud being perpetrated prior to the election. With all the powers and safeguards the Legislature has bestowed on the Board of Election Commissioners, it is possible for fraud to creep into the election and if the same has not been detected or prevented prior to election day, there is still an opportunity to prevent fraud on the day of the election, either as to registration or voting under the provisions of Section 10613, which gives each political party a right to have watchers and challengers in each precinct.

Respectfully submitted,

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APPROVED:

JOHN W. HOFFMAN, Jr.,
(Acting) Attorney General.

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