

PRIMARY ELECTIONS: Persons known to be affiliated with one Party not entitled to vote the ticket of the other Party, unless he obligates himself by oath or affirmation to support the Party nominees of the ticket he is voting, in the following general election.

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June 27, 1936

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Dr. J. H. Davidson  
Chairman  
Saline County Democratic Committee  
Gilliam, Missouri



Dear Dr. Davidson:

This will acknowledge receipt of your letter requesting an opinion from this Department, which reads as follows:

"I am writing to ask that you give me an opinion on the legality of keeping republicans from entering the democratic primary. And also advise me as to the methods the county committee must use to keep them out if it can be done so legally. It has been the custom of about 1500 republicans in this county to go into the democratic primary and help to nominate our candidates for state and county officers and then not support them in the general election.

"The county committee has often discussed this matter but have never found a satisfactory way to stop it because of doubts of the rights of democratic judges of election to challenge a voter and ask him what ticket he is going to vote.

"Has an election judge the right to make a voter swear he will vote the ticket in November if he enters the democratic primary. Our committee will meet July 1st and I will appreciate it very much if you can give me this opinion by that time.

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"Thanking you in advance, I am."

The answer to your inquiry is found in Section 10271, Revised Statutes Missouri 1929; said section reads as follows:

"It shall be the duty of the challenger to challenge and the duty of the judges of election to reject the ballot of any person attempting to vote other than the ticket of the party with which he is known to be affiliated, unless such person, when challenged, obligates himself, by oath or affirmation, administered by one of the judges, to support the party nominees of the ticket he is voting in the following general election. All judges of the election shall have authority and are empowered to administer such oath, or affirmation, and any person offering to vote who shall fail or refuse to take or make such oath or affirmation when demanded by such challenger, or required by any judge, shall not be allowed to vote at such primary election."

It is plain from the above section that challengers and judges of election not only have the authority, but it is made their duty, to challenge and reject the ballots of any person attempting to vote at a primary other than the ticket of the party with which such person is known to be affiliated, unless such person, when challenged, obligates himself, by oath or affirmation, administered by one of the judges, to support the party nominees of the ticket he is voting in the following general election. All persons offering to vote who shall fail or refuse to take or make such

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oath or affirmation when demanded by the challenger or required by any judge, are not entitled to vote at such primary election.

CONCLUSION

It is, therefore, the opinion of this Department that it is the duty of any judge of a primary election to reject the ballot of any person attempting to vote other than the ticket of the party with which such person is known to be affiliated, unless such person, when challenged, obligates himself, by oath or affirmation, administered by one of the judges, to support the party nominees of the ticket he is voting, in the following general election. If a person so challenged fails or refuses to take or make such oath or affirmation when required by any judge, the judge or judges should refuse to allow him to vote at such primary election.

Yours very truly,

J. E. TAYLOR  
Assistant Attorney General

APPROVED:

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

JET:LC