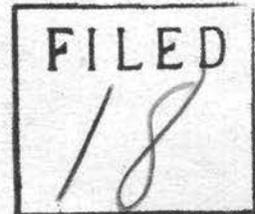


ELECTIONS:) Re prosecution for bribing voter in city election.
BRIBERY:)

May 12, 1937.

5-13



Honorable J. Carrol Combs
Prosecuting Attorney
Barton County
Lamar, Missouri

Dear Sir:

This is to acknowledge receipt of your letter of April 23d in which you enclose a copy of an information which you propose to file in the Circuit Court of Barton County, charging a violation of the election laws. Your letter is as follows:

"During the city election here in Lamar, on April 6th, there was some evidence presented to me concerning the buying of votes at said election, or the attempt to purchase votes, and on the complaint of one, Cora Walters, I filed an information under the Corrupt Practice Act and Sec. 10473 thereof, charging the defendant with attempting to influence one, Mary Ellen Boss to vote at said election. I have been unable to find any cases setting out an information in the same.

"It is my intention to charge this man only with a misdemeanor and punish him under the provisions of Sec. 3938 of the Revised Statutes of 1929. I would like to have your opinion upon the sufficiency of this information in cases of this kind and whether or not the information, as drawn under the provisions of the first sub-division of Section 10473 of the Corrupt Practice Act, charges the defendant with a crime punishable under Section 3938 or with a crime punishable under sub-division

Hon. J. Carrol Combs -2- May 12, 1937.

five of that section provided for a felony, as there has been a difference of opinion between attorneys in our locality on this subject."

From your letter we take it that you desire to charge the defendant with a misdemeanor, and if such is the fact, we suggest that you proceed under the provisions of Section 3938, R. S. Mo. 1929, which covers the crime of bribing, or attempting to bribe a voter, instead, as you suggest, of a combination of Section 3938, supra, and Section 10473, R. S. Mo. 1929.

We are very doubtful if the information which you enclose charges an offense under the statute. If you will examine Kelly's Criminal Law and Procedure, 4th Edition, Section 866, page 804, you will find an indictment which seems to follow the language of Section 3938, supra. We have been unable to find an approved information which fits your case, but the one set out in Kelly's, which has not been approved, seems to meet the situation.

We have prepared and are enclosing a copy of an information which we think charges the misdemeanor of an attempt to bribe a voter under the provisions of Section 3938, supra. The facts upon which we base it are from your letter and also from the proposed information which you sent us.

If there is anything further in connection with this, or if we have not answered your question, please advise.

Very truly yours,

COVELL R. HEWITT
Assistant Attorney-General

CRH:EG

APPROVE :

J. E. TAYLOR
(Acting) Attorney-General

I N F O R M A T I O N

State of Missouri)
County of Barton) ss.

IN THE CIRCUIT COURT OF BARTON
COUNTY, MISSOURI,

SEPTEMBER TERM, 1937.

AT LAMAR, MISSOURI.

STATE OF MISSOURI,
Plaintiff,

vs.

WALT WILKERSON,
Defendant.

J. Carroll Combs, Prosecuting Attorney within and for the County of Barton in the State of Missouri, upon his oath informs the court and charges that on or about the 6th day of April, 1937, in the County of Barton and State of Missouri, an election was duly holden, the same being duly authorized by the laws of the State of Missouri, and that _____ and _____ were severally candidates and voted for at said election for the office of _____, and that said Walt Wilkerson then and there well knowing that said election was being holden as aforesaid, and that said _____ and _____ were candidates and being voted for at said election for the office of _____ as aforesaid, did then and there unlawfully and corruptly by offering a sum of money, to-wit, One Dollar (\$1.00) to one Mary Ellen Boss, as a gift, bribe and reward, attempt to corrupt, influence and procure the said Mary Ellen Boss to give and cast her vote at said election, so holden as aforesaid, to and for the said _____ candidate as aforesaid, for the office of _____ as aforesaid, she the said Mary Ellen Boss then

