

BOARD OF ELECTION
COMMISSIONERS

)That part of Section 36 which provides that
)the information required to be typewritten on
affidavit forms is to be taken from registration
books is directory.

November 22, 1937

11-22



Hon. J. E. Woodmansee
Chairman
Board of Election Commissioners
Kansas City, Missouri

Dear Sir:

This will acknowledge receipt of your letter of November 18, 1937, requesting an opinion from this Department, as follows:

"The Board of Election Commissioners for Kansas City is under the necessity of having your opinion with regard to Section 36, which commences at page 317 of the Laws of Missouri, 1937, which section is part of an act relating to registration for cities of 300,000 to 700,000, the act appearing at pages 294 to 341.

Said Section 36 provides: 'Affidavit forms shall be prepared in the office of the Board of Election Commissioners for all voters who are registered at the time this act takes effect.' The section otherwise indicates that the information shall be taken from the present registration books, and when the voter registers additional information 'which could not be provided from the registration books' shall be given. Further, the section contemplates that as to a voter who has changed his address, he may transfer his registration, and further, that a voter who has not previously registered may register.

After much consideration, the Board is un-animously of the opinion that the method pre-scribed by Section 36 is futile and expensive.

This is the opinion of the Board for the following reasons:

First, the present registers of voters do not contain all of the information required by other provisions of the registration act and especially Section 24 thereof, hence it will be impossible to complete the information upon the affidavit of registration without securing some of the same from the voter. This would mean that it would be necessary to conduct two operations upon the affidavit of registration in the typewriting machines, that is, typing the information from the old registers and then typing the additional information procured from the voter in person.

Second, a very high percentage of the present registration is erroneous, due to deaths, removals from the city, changes of address, and other reasons, so that these facts would involve the useless preparation of cards which would never be required, which would cost both the time to type such cards and the materials used, and beyond that absorb time that is most precious at this period when there is so much to be done and such a short time in which to do it.

If, in your opinion, Section 36 is directory and not mandatory, then the Board feels that much expense and time can be saved by disregarding that section and preparing at once applications for registration which will be, except for the affidavit prescribed by Section 24, replicas of the affidavit of registration. These applications can be filled out by the voters, filed with the Board, the affidavits typed therefrom and the voter can then come to the places of registration and make his affidavit.

This will avoid the erroneous preparation of cards and will enable the Board to complete affidavits of registration with one typewriter operation.

For the foregoing reasons the Board desires to know whether or not, in your opinion, it is obliged to prepare affidavit forms as required by Section 36, or whether said Section 36 is directory only, leaving the Board free to invite applications for registration which will contain all the necessary data correctly set forth from which affidavits of registration may be prepared by the Board and executed by the voter.

We shall be greatly obliged to you for your opinion upon this matter as early as we may have the same.

* * * * *

P.S. The purpose of the Board to check the applications for registration if the same are used against the present registers of voters and this we have thought might be deemed to comply with the provisions of Section 36, requiring the information to be taken from the register."

Section 36 of the Registration Law applicable to Kansas City, Laws of Missouri 1937, page 317, provides in part:

"Affidavit forms shall be prepared in the office of the board of election commissioners for all voters who are registered at the time this act takes effect. The board shall have typewritten on such forms all information required, such information to be taken from the registration books as they exist at such date, except that the spaces for the signatures of the voter and of the registration officer and for the voting record shall be left blank. Between the date when this act takes effect and the date of the close of registration before the first election thereafter, such voters may present themselves at the office of the board, or at branches hereinafter provided for, for the purpose of subscribing to the affidavits of registration so prepared. At the same time, they shall give any information called for on the affidavit forms which could not be provided from the registration books.* * * *"

It will be noted from a reading of the above section that the word "shall" which ordinarily but not necessarily denotes a mandatory duty is used in connection with the Board having typewritten on the affidavit forms all information required, and such mandatory language is not found in the clause stating that the information shall be taken from the registration books. Said section however states "such information to be taken from the registration books as they exist at such date." The question for our determination is whether or not said provision is mandatory or merely directory.

The general rule in regard to whether or not the duties of public officers are mandatory or not is stated in 59 Corpus Juris, page 1076, as follows:

"Generally statutes directing the mode of proceedings by public officers designed to promote method, system, uniformity and dispatch in such proceedings will be regarded as directory."

The law is stated in 20 Corpus Juris, Section 6, page 87, as follows:

"It is a general rule that statutes prescribing the power and duties of registration officers should not be so construed as to make the right to vote by registered voters dependent on a strict observance by such officers of minute directions of the statute, thereby rendering the constitutional right of suffrage liable to be defeated through the fraud, caprice, ignorance, or negligence of the registrars."

Cooley's Constitutional Limitations, Eighth Edition, Volume 2, pages 1396, 1937, states:

"Election statutes are to be tested like other statutes, but with a leaning to liberality in view of the great public purposes which they accomplish; and except where they specifically provide that a thing should be done in the manner indicated and not otherwise, their pro-

visions defined merely for the information and guidance of the officers must be regarded as directory only."

In the case of State ex rel. Ellis vs. Brown, 326 Mo. 627, the Supreme Court at page 633 quoted from Ruling Case Law with approval as follows:

"A mandatory provision is one the omission to follow which renders the proceeding to which it relates illegal and void, while a directory provision is one the observance of which is not necessary to the validity of the proceeding. Directory provisions are not intended by the Legislature to be disregarded, but where the consequences of not obeying them in every particular are not prescribed the courts must judicially determine them. There is no universal rule by which directory provisions in a statute may, in all circumstances, be distinguished from those which are mandatory. In the determination of this question, as of every other question of statutory construction, the prime object is to ascertain the legislative intention as disclosed by all the terms and provisions of the act in relation to the subject of legislation and the general object intended to be accomplished. Generally speaking, those provisions which do not relate to the essence of the thing to be done and as to which compliance is a matter of convenience rather than substance are directory, while the provisions which relate to the essence of the thing to be done, that is, to matters of substance, are mandatory." (25 R.C.L. Sec. 14, pp. 766-7)"

As pointed out in the above case, in order to determine whether or not the provision in question is mandatory or directory, we must ascertain the legislative intention as disclosed by all the terms and provisions of the registration act. It is evident from a reading of Section 36 supra which provides the procedure to be followed for the first registration to be held under the new act that it is the duty

of the Board of Election Commissioners to prepare affidavit forms for all voters who are registered at the time of the effective date of said act, and to have typewritten on such forms all the information required to be sworn to by the voters. The provision that such information is to be taken from the registration books was undoubtedly an attempt on the part of the legislature to facilitate and expedite the first registration. From your letter we learn that the Board is unanimously of the opinion that the method prescribed by Section 36 for obtaining the information from the registration books is futile as well as expensive for numerous reasons which you pointed out. It is evident that the information contained in the registration books was not meant to be the sole source of information in filling out the affidavits, for it is specifically provided that the voters "shall give any information called for on the affidavit forms which could not be provided from the registration books." Certainly a voter could not be required to sign an affidavit prepared from the registration books if same contained any erroneous or false information. It is therefore evident that the important and essential thing is that the affidavit forms be prepared and contain the correct information required regardless from what source obtained, whether from the registration books, the application for registration or from the voter himself, and that the voters are given ample opportunity of subscribing to the affidavits of registration so prepared. Certainly it cannot be argued that the failure of the Board of Election Commissioners to obtain the information for the affidavits of registration from the registration books would void any election or deprive a qualified registered voter from casting his ballot at such election.

In *Yunker vs. Susong*, 173 Iowa 663, the registers in preparing the registration books instead of using the poll books of November 1912 as directed by the statute used the poll books of the City election held in March 1914. The Court at l. c. 683, 684, said:

"It must be admitted from this record that there was not a strict observance of the registration laws by the registration officers. But it is clear that such officers attempted to provide a means for ascertaining the citizens who shall be entitled to vote, and this is the purpose of the registration laws. It is not

claimed that there was any fraud or corruption on the part of any of the election officers. A registration of some sort was had and new names were added to the lists contained in prior poll books, and we think that there was a substantial compliance with the statute in so far as to ascertain and furnish a list of voters entitled to vote. So that, even if the officers whose duty it was to prepare the poll books and the voting lists did not strictly follow the statute, the voters were in no manner to blame, and they should not be deprived of their right to vote because of some mistake of the registration officers. It ought not be the law that each voter about to register, or who is entitled to have his name brought forward on a new list, must, at the peril of losing his right to vote, take an attorney with him to see that the registration officers perform their duty. We fail to see how anyone was prejudiced by the error, if any, of the registration officers."

The case of *People ex rel. Frost et al. vs. Wilson*, 62 N.Y. Rep. 186, was a quo warranto proceeding to oust defendant from the office of County Clerk because of irregularities of the inspectors in making and copying the registry as required by the registry act. One of the complaints was that they made the preliminary register from the register of the spring election instead of the poll list of the general election in the fall of 1872 as required by law. The Court in passing upon this question at l. c. 190 said:

"It is claimed by the learned counsel for the relator, and the judgment of the General Term proceeded upon the proposition, that the statute imperatively requires that inspectors of election in making a register shall use the poll-list of the next preceding general election, and enter in the new register all names appearing thereon. But we are of opinion, after a careful consideration of the provisions of the registry act, that while it authorizes the inspectors to use the poll-list of the last preceding general election in preparing

the preliminary register, and for this purpose to take it from the office where it is filed, its use by them is not made imperative, and is not essential to the validity of the registry, and that the inspectors are not required to enter therein the names of all persons appearing upon the list."

And further at l. c. 191 it is stated:

"The duty of the inspectors in this case was to place on the preliminary register the names of all persons still residing in the second ward, whose names were on the poll-list of the fall election of 1872. If they were so placed upon it, the duty was performed, however they derived the information upon which they acted."

We think the above case is authority for holding that the Board of Election Commissioners will have substantially complied with the duty imposed upon them by law if affidavit forms are prepared for all voters who are registered at the time of the effective date of the new registration act and such forms have typewritten on them all information required to be sworn to by the voter regardless of from where they obtained such information.

CONCLUSION.

In view of all the above it is the opinion of this Department that that part of Section 36 of the Registration Act applicable to Kansas City which provides that the information required to be typewritten on the affidavit forms is to be taken from the registration books as they exist at the effective date of the present registration act is merely directory, and that if the Board of Election Commissioners have typewritten on such forms all the information required they will have substantially complied with Section 36 of the Registration Act regardless of whether the information was obtained from the registration books or from some other source.

Respectfully submitted,

APPROVED:

J. E. TAYLOR,
Assistant Attorney General

ROY McKITTRICK,
Attorney General