

ELECTIONS; Four questions on registration and elections
in cities of 30,000 to 80,000 population (Joplin)

February 24, 1938

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Dear Sir:

This will acknowledge your inquiry of
the 21st instant, which reads as follows:

"Our Legislature has passed a new
registration law pertaining only
to the City of Joplin, being found
in Session Acts of 1937 at page 289.

"The Joplin Board of Election Com-
missioners and our County Clerk have
asked me for an opinion regarding
certain phases of the new law. In
order that there may be a uniform
opinion over the State, I am asking
for your opinion on the following
questions.

" 1. Is the registrar to have charge
of the registration books during the
time of actual voting, or is the
registrar merely there to check the
challenge lists as the voters appear?

" 2. Does the elected registrar have
a vote as a member of the Board of
Election Commissioners in determining
who are eligible to vote, or to regis-
ter?

" 3. Does the Board of Election Com-
missioners have a right to make a rule
that the registrars shall have the
sole control over the registration

books, make all entries made in them, and prohibit the County Clerk from entering any names in the books?

" 4. Who is to determine whether a voter is properly registered, the registrar or the judges of election?

" I shall appreciate your opinion on these questions as our Election Board meets on February 28th."

Your letter presents four questions, and we shall discuss them in order.

I.

Is the registrar to have charge of the registration books during the time of actual voting, or is the registrar merely there to check the challenge lists as the voters appear?

Sec. 5, p. 292, L. 1937, provides in part as follows:

"The Clerk of the county court of counties wherein a city or cities of 30,000 to 80,000 inhabitants are located shall have custody of and keep in his office all registration books and affidavits. *** "

Sec. 14, p. 233, L. 1933, reads as follows:

"The county clerk of each county containing cities in which registration may be had under and by virtue of this article shall, on the day before the election for which any such registration was made, deliver to the judges of election appointed under and by

virtue of the general law of elections, the original registration book of their respective precincts, together with a copy thereof, heretofore required to be made, and shall take the receipt of one of the judges therefor."

From the foregoing, it appears that the county clerk, who is the custodian of the registration books, is required to deliver same to the judges of the respective precincts on the day before the election is to be held. It is quite apparent that the judges of election would need such registration books in order to determine whether voters who offer to vote are registered in their precincts.

The duties of the registrars on election day are set forth in Sec. 3, p. 290, L. 1937, in the following language:

"The Board of Election Commissioners shall meet on the tenth day before the election unless said tenth day fall on Sunday in which case said meeting shall be held on the Saturday preceding said tenth day, and pass on all challenges made to the right of persons to register and if any names are challenged said board shall cause to be made a certified list of said challenges to be delivered to the registrar of each ward which registrar shall serve as an official of the election and challenge the right to vote of such persons, who offer to vote, and if such persons do not appear they shall so certify at the close of the election and such names shall be stricken from the books. Registrars shall serve only during the time of voting and shall receive the same pay as registrars days. ** "

It seems clear, therefore, that the registrar who has been furnished a list of challenges which have been made to the Board, is an election official for the purpose of challenging the vote of any person whose registration has been challenged. He would not need the registration book for this duty, since he had a certified list of the challenged names in his possession.

CONCLUSION

It is, therefore, the opinion of this office that the registrar in cities of 30,000 to 80,000 population is not entitled to have charge of the registration books during the time of actual voting, but that it is the duty of the registrar to challenge the votes of all persons who offer to vote whose registration has been challenged as shown by the certified list of challenged names furnished to him.

II.

Does the elected registrar have a vote as a member of the Board of Election Commissioners in determining who are eligible to vote, or to register?

Sec. 2, p. 215, L. 1931, provides for the creation of a Board of Election Commissioners composed of four members. There is nothing in the statutes governing cities under consideration which in any case enlarges the membership of said board.

Sec. 3, p. 290, L. 1937, provides in part as follows:

"The Board of Election Commissioners shall have a supervisory control over the Clerks of the County Courts and over the registration officers appointed by virtue of this Article touching all matters appertaining to the registration of voters. ** "

As the Board composed of four members has supervisory control over the registrars, it would be difficult to see how this control could be exercised if the registrars of the various voting districts have a vote as members of the Board, since there would evidently be more than four registrars in a city of the size under consideration. We find nothing in the law governing registrations and elections in such cities which makes registrars members of the Board.

CONCLUSION

It is, therefore, the opinion of this office that the elected registrar in cities of 30,000 to 80,000 population does not have a vote as a member of the Board, in determining who is eligible to register.

III.

Does the Board of Election Commissioners have a right to make a rule that the registrars shall have the sole control over the registration books, make all entries made in them, and prohibit the County Clerk from entering any names in the books?

As heretofore pointed out, Section 5, p. 292, L. 1937, places the custody of the registration books in the clerk of the county court, and requires him to keep such books in his office. The same section provides that such clerk may register any qualified voter or transfer his registration on any day of the year, except Sundays and holidays, prior to the twenty-fifth day before an election. His office is an office which is open daily, except Sundays and holidays, during the whole year, and evidently the Legislature provided that the registration books should be left in his office in order that they might be accessible to the voters at all

times for the purpose of registering or of having their registration transferred.

The duties of the registrars are set forth in Sec. 13, p. 293, L. 1937, which reads as follows:

"The registration officers shall, in the discharge of their duties, attend at the places of registration in their respective districts on the days appointed by the Board of Election Commissioners and by this article, from the hour of eight o'clock in the forenoon until nine o'clock P.M. of each day, and shall, without delay, register all persons as voters who, having the qualifications prescribed by law, present themselves therefor and take the oath required by this article; provided, however, the registration officers shall transfer from one ward to another the name of any person who presents himself to be transferred upon the making of an affidavit in form to be provided by the county clerk showing himself to be a registered voter in the ward from which he wishes to transfer. The said registrar shall write opposite the name of said person transferred from Ward (giving number of ward from which said person is transferred). The said registrar shall carefully preserve all such affidavits and deliver them to the county clerk who shall enter them and strike from the registration books of the ward the name of the person so transferred."

The registrars are only required to be present to receive applications for registration on days set apart

for registration. If the county court could and would prohibit the county clerk from having any control over the registration books and could order them turned over to the registrars, the voters would have no opportunity to register or have their registration transferred except on the regular registration days. Such an arrangement would nullify the provisions of Section 5, supra, and would clearly defeat the purpose of the Legislature.

It is true that Section 3, supra, gives to the Board supervisory control over the county clerk touching all matters appertaining to the registration of voters, but does supervisory control give the Board the power to prevent the county clerk from performing the duties imposed upon him? We think not. Supervisory control implies that there is something to supervise and control, and that which is to be supervised by the Board in this case is the performance by the county clerk of the duties imposed upon him by these registration laws.

In the case of *Kollentz vs. Chicago and N.W. Ry. Co.*, 175 N. W. 927; 180 Wis. 385, the Supreme Court, in discussing the power of supervisory control, which the circuit court had over inferior courts, said:

"Its function is: (a) to compel inferior tribunals to act within their jurisdiction; (b) to prohibit them from acting outside their jurisdiction; and (c) to reverse their extra-judicial acts."

CONCLUSION

It is, therefore, the opinion of this office that the Board of Election Commissioners does not have the right to make a rule that the registrars shall have sole control over the registration books, or that the registrar shall make all entries made in them, or to prohibit the county clerk from entering any names in the registration books.

IV.

Who is to determine whether a voter is properly registered, the registrar or the judges of election?

As we read Sections 5 and 13 of the 1937 Act, we understand the provisions to mean that whenever a voter makes the required affidavit to the county clerk, or to the registrar of his voting district on registration days, showing himself to be a qualified voter, such voter is entitled to be registered. Section 3 of said act provides that any voter may challenge the right of any person registered to register. Such challenges must be filed in writing with the Board, and the Board is directed to notify the persons whose registration has been challenged, to appear before it and show cause why their names should not be stricken from the registration books. The Board is required to meet at the appointed time and pass on all challenges.

Section 10, p. 232, L. 1933 provides:

"** Any person whose name is stricken from the registration books shall have the right to appeal from the ruling of the board of election commissioners to the circuit court of the county on any date before the election. "

Therefore, if the Board is required to notify persons whose right to register has been challenged, to appear and show cause why their names should not be stricken from the registration books and is given power to pass on said challenges, and if a voter whose name has been stricken from the registration books, has the right to appeal from the ruling of the Board of Election Commissioners to the circuit court, it follows that the Board necessarily has the power to determine whether a voter is properly registered, subject, of course, to the right of the circuit court to review its action. If the registrar had the right to determine

who is properly registered, the right of appeal would have been from his ruling.

Said Section 3 does provide that if any names are challenged, the Board shall cause a certified list of said challenges to be delivered to the registrar of each ward who shall serve as an official of the election and challenge the right to vote of such persons who offer to vote, and it may be this provision is what gives rise to your fourth question.

We are frank to say that this part of the Act is rather indefinite and somewhat confusing. However, the main duty of the Board of Election Commissioners is to conduct registration of voters and to pass upon the qualifications of those who offer to register, subject to the power of the circuit court to supervise its action, and Section 3, supra, specifically empowers and directs the Board in cities inquired about to meet and pass on the challenges made to the right of voters to register. If the Board strikes a name off the registration list, the party whose name is so stricken has the right to appeal under Section 10, page 232, L. 1933. If the Board decides the challenged person is properly registered, any member of the Board can appeal from such decision to the circuit court under said Section 10. Therefore, it would seem that a complete scheme is provided for determining whether any person is properly registered and that the registration book, which is turned over to the judges of election on the day previous to election day, contains a list of those persons who are properly registered.

It should be observed that the registration law under consideration does not in any way undertake to regulate or control the judges and clerks of election. It merely has to do with registration of voters.

Section 10554, R. S. Mo. 1929 provides as follows:

"All elections in such city shall be conducted in all respects as provided in this article, and subject to all the provisions of chapter 61, R. S. 1929, entitled 'Elections,' so far as the same do not conflict with this article."

Therefore, we must look to the provisions of the Article of which this registration law is a part (Article XVI, Chapter 61) and also to Chapter 61, R. S. Mo. 1929, for directions as to the procedure in case of challenges on election day. Said directions are found in Section 10544, R. S. Mo. 1929 in the following language:

" ** Provided, any person registered according to the provisions of this article, when he offers to vote, may be challenged as disqualified by any person who is an elector of this state; and it shall be the duty of the judges of election to try and determine, in a summary manner, before the close of the polls, the qualifications of any person challenged as aforesaid, and upon proof that the person so challenged is not a qualified voter, the judges of election shall reject his vote, and they shall state, opposite the name of the person on the registered list of voters whose vote is rejected, the nature of his disqualification and the names of the witnesses upon whose testimony his vote was rejected, but the vote of no person who may be challenged shall be rejected except upon the testimony of two credible witnesses; and provided further, that the party challenging the right of any person to vote shall swear, before the judges of election at the time of so challenging the vote, that to the best of his knowledge and belief the party (naming him) is not a qualified voter under the laws of this state, and he shall also swear to the reasons which disqualify him from voting; and provided further, that the ballot of such person so rejected shall be preserved and returned with the books and other ballots in a separate envelope marked rejected ballots, and the clerk of the county shall preserve the same in his office."

And in Section 10309, in the following language:

" ** If any person desiring to vote at any election shall be challenged, he shall not receive a ballot until he shall have established his right to vote in the manner provided by law; and if he shall be challenged after he has received his ballot, he shall not be permitted to vote until he has fully complied with such requirements of the law.
*** "

It is seen by the foregoing provisions that if a voter asks for a ballot, the judges, before giving him such ballot, must first determine whether such voter's name appears upon the registration list. If it does, then the voter is entitled to vote, unless he is challenged. If he is challenged, he is not entitled to a ballot until he shall have established his right to vote in the manner provided by law, the manner provided by law in the instant case being that set out in Section 10544, supra.

The provisions in Section 3 of the 1937 Act, supra, give the registrar the right and makes it his duty to challenge on election day the vote of the persons who have been registered after their registration has been challenged, and thus such registrar has the right to put the question of the right of such person to vote up to the judges of election.

It is apparent that there are a number of sections of law touching the immediate question at hand, some general and some special. In interpreting these various sections, we think an effort should be made to give effect to all of them and reconcile them, if possible.

We have tried to follow the rule laid down in the case of *Timmonds vs. Kennish*, 244 Mo. 318, l.c. 326, wherein the court said:

"**It is our duty to dovetail and reconcile all the election laws, so far as possible, and to give effect to all of them applicable to the situation, bearing in mind that if any inconsistency appears between the general law and the special law on any one point, the latter must prevail. **"

CONCLUSION

Applying this rule to the provisions cited above, we conclude that the Board of Election Commissioners has the right to determine whether a voter is properly registered, subject to the supervisory control of the circuit court, but that the judges of election have the final say as to whether the voter has the right to vote if his vote is challenged by the registrar of his election district or by any other voter.

Respectfully submitted,

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APPROVED:

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