

- ELECTIONS:**
- (1) Candidate for office of county clerk need not be a taxpayer.
 - (2) Candidate eligible for township office even though kept partially at county expense in private home.
 - (3) Inmates of Tubercular Hospital at Mount Vernon, Missouri entitled to vote absentee ballot.

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Hon. J. Raymond Hall
Clerk of the County Court
Lancaster, Missouri



Dear Mr. Hall:

We have received your letter of July 21 in which you requested an opinion on three separate matters. Your first question reads as follows:

"Can a candidate who has never been a tax payer qualify for a county office?"

In another communication you have advised us that the particular office you have in mind is that of Clerk of the County Court. The only qualifications which a candidate for this office must have are contained in Section 11650, R. S. Mo. 1929. This section reads as follows:

"No person shall be appointed or elected clerk of any court, unless he be a citizen of the United States, above the age of twenty-one years, and shall have resided within the state one whole year, and within the county for which he is elected three months before the election; and every clerk shall, after his election, reside in the county for which he is clerk. (R.S. 1919, Section 2096.)"

Neither this section nor any other law of this state requires that a candidate in order to be eligible for such office should be a taxpayer or that he should own any property whatsoever upon which taxes might be assessed.

CONCLUSION

We conclude, therefore, that it is not necessary for a candidate for the office of Clerk of the County Court to be a taxpayer.

II

Your next question reads as follows:

"Can a candidate who is being kept at county expense but not in the county poor farm qualify for a township office?"

Section 12276, R. S. Mo. 1929 gives the qualifications necessary for a township office. This section reads as follows:

"No person shall be eligible to any township office unless he shall be a qualified voter and a resident of such township."

Therefore, since a person, in order to be eligible to run for a township office, must be a qualified voter and resident of such township, it is necessary to determine whether or not a candidate who is being kept at county expense but not in the county poor farm is eligible to vote.

In another communication from you we learn that the exact situation which you have in mind is where the county is paying a

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part of the expenses of a resident in a private home. This office has previously ruled on this same question. We are enclosing herewith a copy of an opinion of this office dated October 20, 1936, and addressed to the Honorable Owen G. Jackson, Chairman of the Board of Election Commissioners, Clayton, Missouri. This opinion holds that occupants of private homes who are being partially supported by the county are not inmates of a poor house within the meaning of Article 8, Section 2 of the Constitution of the State of Missouri, or Section 10178 R. S. Mo. 1929. This particular constitutional provision and Section 10178 provide in effect that no person shall be entitled to vote while kept in any poor house or other asylum at public expense.

CONCLUSION

We conclude, therefore, that a candidate who is being kept at county expense, but not in a poor farm, is not disenfranchised for such reason. That if such a person can qualify as a voter in all other respects, he is qualified to be elected to a township office.

III

Your next and last question reads as follows:

"Can inmates of the State Sanitorium be permitted to vote an absentee ballot?"

Through another communication from you we learn that you have in mind persons who are temporarily confined in the State Tubercular Hospital at Mount Vernon, Missouri.

Section 2, Article 8 of the Missouri Constitution reads as follows:

"All citizens of the United States, in-

cluding occupants of soldiers' and sailors' homes, over the age of twenty-one years who have resided in this state one year, and in the county, city or town sixty days immediately preceding the election at which they offer to vote, and no other person, shall be entitled to vote at all elections by the people; provided, no idiot, no insane person and no person while kept in any poor-house at public expense or while confined in any public prison shall be entitled to vote, and persons convicted of felony, or crime connected with the exercise of the right of suffrage may be excluded by law from the right of voting."

Section 10178 R. S. Mo. 1929 provides as follows:

"Every male citizen of the United States and every male person of foreign birth who may have declared his intention to become a citizen of the United States according to law, not less than one year nor more than five years before he offers to vote, who is over the age of twenty-one years, possessing the following qualifications, shall be entitled to vote at all elections by the people: First, he shall have resided in the state one year immediately preceding the election at which he offers to vote; second, he shall have resided in the county, city or town where he shall offer to vote at least sixty days immediately preceding the election; and each voter shall vote only in the township in which he resides, or if in a town or city, then in the election district therein in which he resides: Provided, however, that no officer, soldier or marine in the regular army or navy of the United States, shall be entitled to vote at any election in this state; and provided further, that no person while kept at any poorhouse or other asylum at public expense, except the soldiers'

home at St. James and the confederate home at Higginsville, nor while confined in any public prison, shall be entitled to vote at any election under the laws of this state; nor shall any person convicted of felony or other infamous crime, or of a misdemeanor connected with the exercise of the right of suffrage, be permitted to vote at any election unless he shall have been granted a full pardon; and after a second conviction of felony or other infamous crime, or of a misdemeanor connected with the exercise of the right of suffrage, he shall be forever excluded from voting. (R.S. 1919, Section 4748.)"

We are assuming of course that the persons who are at the present time confined at the Mount Vernon Hospital are of sound mind. Therefore, the question resolves itself into the meaning of the term "poor-house at public expense" as used in the Constitution and the term "poorhouse or other asylum at public expense" as used in said Section 10178. For our present purposes we will disregard the question as to whether or not the statute can be broader on the same subject matter than the constitutional section, particularly with respect to limitations on the right to vote.

In the case of Hale v. Stimson, 198 Mo. 134, the court had before it the question as to whether or not the old soldiers kept in the St. James Home at St. James, Missouri, were disfranchised by the above constitutional provision and statute. In holding that the term "poorhouse and other asylum" could not possibly include these old soldiers and that they had the right to vote the court said:

"In short, and plainly put, appellant's counsel rely upon the proposition that the 'other asylum' referred to in the Constitution should be in and of the same class as a poorhouse, and we sympathize with that view. These contentions they sustain by a wealth of cited authority.

The argument proceeds upon the lofty plane that it is inconceivable that a home for old soldiers should be construed as struck at by a provision referring to poorhouses and other asylums. But as this insistence is nearly related to the question of public policy, the one may as well be treated as merged in the other, and the same consideration cover both.

"It is argued for respondent in effect that the provisos of section 6994, supra, are so framed as to show, by force of the doctrine of noscitur a sociis, that the legislative mind considered soldiers' homes as poorhouses, or other asylums—the language being, 'kept at any poorhouse or other asylum at public expense, except the Soldier's Home at St. James and the Confederate Home at Higginville.' Such argument is ingenious and might be allowed force in the absence of a manifest purpose writ large in the statute. A minor consideration in the legislative mind might have been the enumeration and classification of places of abode, such as prisons, poorhouses, asylums and homes. Indeed, the section in review enumerates the inmates of public prisons along with those of homes, poorhouses and asylums, but it would be an ungracious and unnecessary construction to say that the Legislature had in mind the classification of a soldiers' home with jails, prisons and poorhouses. The salient matter in the legislative mind was: who should vote and who should not vote? and if the gloss of the section is approached from that standpoint it will be seen that the Legislature intended the old soldiers should vote, i.e., it is said so.

"Proceeding a step further, it will appear that section 6994 was plainly passed to carry out the Constitution. Therefore, the Constitution was in the legislative mind, and, being in the legislative mind, it would follow that in permitting

the inmates of the soldiers' homes to vote, the Legislature must be held to have considered the Constitution to preclude the construction that a soldiers' home was a poorhouse, or other asylum kept at public expense, or a jail or prison. Any other view would convict the law-makers of having the Constitution before their very eyes and of passing a law in obedience thereto, while at the same time purposely, perversely, and wilfully violating its terms."

Furthermore, in considering the meaning of the term "other asylum" we must take into the consideration the principle of *eiusdem generis*. The term "other asylum" is a general term following particular words and according to said doctrine the meaning of the general term must be confined in its application to the particular word. That is to say, the term "other asylum" must be confined in its application to an asylum of the same class as a "poorhouse." As stated in the case of *State v. Krueger*, 134 Mo. 262, the rule of *eiusdem generis* is as follows:

"In construing Statutes, where general words follow particular ones * * * * * the rule is * * * * * as follows: 'Where a particular class is spoken of, and general words follow, the class first mentioned is to be taken as the most comprehensive, and the general words treated as referring to matters *eiusdem generis* with such class.'"

CONCLUSION

It is, therefore, our conclusion that the Tubercular Hospital at Mount Vernon cannot be classified as a "poorhouse or other asylum"

Hon. J. Raymond Hall

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and that the inmates thereof are entitled to vote at their places of residence by absentee ballot.

Respectfully submitted

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APPROVED:

J. W. BUFFINGTON
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JFA/w