

ELECTIONS: Voters may write in on their ballot names of a committeeman and committeewoman and may designate the election district for which such committeeman and committeewoman are being selected, even though there is no space left on the ballot for such offices.

July 28, 1938

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*Hardin*  
Jackson County  
Board of Election Commissioners  
Court House  
Independence, Missouri

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Gentlemen:

This will acknowledge receipt of your inquiry of the 27th which reads as follows:

"Our Board of Election Commissioners has a copy of an opinion given by your Mr. Harry H. Kay, dated June 17, 1938, addressed to Mr. Hampton Tisdale of Boonville, Missouri. This opinion was in response to a request to interpret Section 10278, R. S. of Missouri, 1929.

"This opinion holds that -- 'Each ward in an incorporated city is entitled to one committeeman and one committeewoman on the County Committee and in addition to these the territory of a township lying outside of such incorporated city or cities and within the township is entitled to one committeeman and one committeewoman on the County Committee.'

"In Jackson County (outside of Kansas City) it has been the custom in the past to elect

a committeeman and a committeewoman from each township, but none for each ward of incorporated towns. Our tickets as printed to be used in the Primary Election next Tuesday have printed on them the candidates for County Committee in each township and a line under the candidate's name that a voter may write in another name for the office (and scratch the printed name) if he desires.

"It has recently been reported to members of our Board that at the coming Primary Election voters, under instructions from party workers, will write at the foot of the ballot used in the various wards of Independence and of other incorporated towns of the County and the names of a man for committeeman and a woman as committeewoman and designate under the name that they are voting for such names as committeeman and committeewoman for a certain ward. For instance, a voter in the First Ward of Independence will write on the ballot 'John Doe, as Committeeman for First Ward, Independence, Missouri.' Writing not only the name, but the office on the ballot. We enclose a sample ballot.

"Our Board would like to have your opinion as to whether the Judges of Election should count the votes for such offices so written on the ballot as above specified and should the Board then certify them.

"Also, in Jackson County we have two towns, Levasy and Grain Valley, that are incorporated, but not divided into wards. In your opinion, would such a town be entitled to elect a committeeman and a committeewoman on the County Committee.

"We have talked to Mr. Harry H. Kay of your office by phone this morning and advised him of

the situation here and of the fact that we are sending this letter.

"The Judges and Clerks under our supervision are to meet here in independence on Saturday evening of this week and we should like very much to have your opinion in this matter by Saturday morning if possible."

Reference is made in your letter to an opinion rendered by this office giving our interpretation of Section 10278, R. S. Mo. 1929. Said latter section reads as follows:

"At the August primary each voter may write in the space left on the ballot for that purpose the names of a man and a woman, qualified electors of the precinct, or voting district as the case may be, for committeemen for such township, or voting district, and the man and the woman receiving the highest number of votes in such township, or election district, shall be the members of the party committee of the county, or in the case of a city not within the county, of the city of which such voting precinct, or district is a part: Provided, that any qualified elector in any such voting precinct or district may have his or her name printed on the primary ballot, or party ticket on which he or she may desire to become a candidate for committeeman or committeewoman by complying with the provisions of section 10257, R.S. 1929. (Laws 1923, p. 197, section 1.)"

It will be seen that the above section of the statutes distinctly gives the right to each voter to write in the space left on the ballot for that purpose the names of a man and a woman for committeeman and committeewoman for such voter's voting district. Said section also provides that the man and the woman receiving the highest number of such votes in such election district shall be the members of the party committee of that county.

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In the opinion from this office to which you make reference, being the opinion dated June 17, 1938, addressed to Mr. Hampton Tisdale, Boonville, Missouri, we pointed out that Section 10284 defined "precinct" and "election districts" to be wards of incorporated cities and the part of townships lying outside of such incorporated cities.

The question presented by your recent inquiry amounts to asking whether voters can be deprived of their right to vote on a committeeman and committeewoman from their respective wards or townships by reason of the fact that the officials who prepare the printed ballots do not leave a blank space for that particular office on the ballot. It has been held that members of a party committee are officers. (State ex rel v. Hamilton, 240 S.W. 445.) Therefore, in view of Section 10278, these particular officers are to be voted on at the primary election. This fact is known to the authorities who prepare printed ballots for such primary election, since they are presumed to know the law touching such elections. Each voter has a statutory right to vote for such officers at the primary, and your inquiry narrows down to the question of whether the failure of the election officials who prepare the ballots to leave a blank space for writing in the name of such officers (party committeemen) deprives the voters of their right to cast their ballot for their choice of such officer.

We think the rules to be applied in construing Section 10278, as well as any other statute relating to elections, has been announced in the case of Nance v. Kearbey, 251 Mo., l.c. 383-4 in the following language:

"Election laws must be liberally construed in aid of the right of suffrage. (State ex rel. v. Hough, 193 Mo. l.c. 651; Hale v. Stinson, 198 Mo. 134.) The whole tendency of American authority is towards liberality to the end of sustaining the honest choice of electors. (Stackpole v. Hallahan, 16 Mont. 40.) The choice of electors must be judicially respected, unless their voice is made to speak a lie, or a result radically vicious, because of a disregard of mandatory statutory safeguards.

"The uppermost question in applying a statutory regulation to determine the legality of votes

cast and counted is whether or not the statute itself makes a specified irregularity fatal. If so, courts enforce it to the letter. If not, courts will not be astute to make it fatal by judicial construction. (Gass v. Evans, 244 Mo. l.c. 353; Hehl v. Guion, 155 Mo. 76.) 'Such a construction' (says this court, speaking through BARCLAY, J., in Bowers v. Smith, 111 Mo. l.c. 55) 'of a law as would permit the disfranchisement of large bodies of voters, because of an error of a single official, should never be adopted where the language in question is fairly susceptible of any other. (Wells v. Stanforth (1885), 16 Q. B. Div. 245.)' Again (pp. 61-2): 'If the law itself declares a specified irregularity to be fatal, the courts will follow that command irrespective of their views of the importance of the requirement. (Ledbetter v. Hall (1876), 62 Mo. 422.) In the absence of such declaration, the judiciary endeavor as best they may to discern whether the deviation from the prescribed forms of law had or had not so vital an influence on the proceedings as probably prevented a free and full expression of the popular will. If it had, the irregularity is held to vitiate the entire return; otherwise it is considered immaterial.'

The same principle is found in 20 C.J. 152, in the following language:

"Since electors cannot be disfranchised because of the neglect of the officers charged with the duty of preparing the ballots, technical errors on the part of an officer charged with the preparation of official ballots will not destroy the efficacy of the ballots nor invalidate the election, unless the statute expressly makes a specified irregularity fatal."

In view of the above rules, it is clear that to say that voters could not exercise the rights given to them by Section 10278 to vote for party committeemen in their respective election

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districts because the printed ballots did not have a space left on them for that particular office, would be to hold that large bodies of voters would be disfranchised because of an error of the election officials, and such a holding is not warranted by the law. The statute in question gives the voter the right to write in on his ballot his choice for committeeman and committeewoman for his particular election district. It would seem, therefore, that if the voter writes in his choices on the ballot and designates for what office they are his choices, election officials would be obligated to count such votes. If a liberal construction is to be given this statute, which must be done in view of the holding in *Nance v. Kearbey*, supra, then it follows that where a voter clearly expresses his intention by writing in on his ballot the name of his choices for committeeman and committeewoman of his election district, such vote should be counted. There could be no question in such case about the intention of the voter. He would clearly express his intention by actually writing out on his ballot the name of his choice and the office for which he is making his choice. It would seem that such an action by the voter would more clearly express his intention than filling out a blank with the name of the office printed under it. Since the ultimate purpose of all elections is to ascertain the choice of the voters, then we think that where the choice is expressed as clearly as it would be in the instance you inquire about, the votes should be counted.

As to the other inquiry about the rights of towns which are incorporated but are not divided into wards, we think the statute is clear. There is nothing in the statute which says or even intimates that a city or town is entitled to a committeeman and committeewoman. The unit which is entitled to representation on the county committee is an election district which is defined by Section 10284 to be a ward of an incorporated city or a township outside of such city.

#### CONCLUSION

It is, therefore, the opinion of this office that if voters write in on their ballot the names of a man and a woman for committeeman and committeewoman and designate under or in

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connection with said names that they are the choice of such voter for committeeman and committeewoman of the ward in which such voter resides, the judges of election should count the votes for such officers so written on the ballot and should certify the results of such a count; and if a voter lives in a ward of an incorporated city and no blank space has been left on the ballot marked for committeeman and committeewoman of the ward of such voter, then the voter may write in on the bottom of said ballot or at any other place on said ballot the names of a man and a woman and designate under or near their names the words of "committeeman, Ward No. \_\_\_\_\_, Independence," or "committeewoman, Ward No. \_\_\_\_\_, Independence," or other words which will show for what office the voter is making his selection. It is also the opinion of this office that incorporated towns which are not divided into wards are not entitled to have a committeeman and committeewoman elected therefrom to serve upon the county committee.

Yours very truly

HARRY H. KAY  
Assistant Attorney General

APPROVED:

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J. W. BUFFINGTON  
(Acting) Attorney General

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