

ELECTIONS -- Board of Election Commissioners of St. Louis have five whole days immediately preceding any election within which to make transfers of registration.

March 9, 1938. 3/10

W. J. ...
Board of Election Commissioners
For the city of St. Louis
208 South Twelfth Blvd.
St. Louis, Missouri



Gentlemen:

This will acknowledge your letter of March 1, 1938, which reads as follows:

"The Board of Election Commissioners respectfully requests your opinion concerning the proper interpretation of the words 'until five days preceding any election' occurring in Section 18 of the Act relating to registration in the City of Saint Louis, (Laws of 1937, Page 235).

"Is this section to be construed as giving the Board five whole days immediately preceding any election within which to make such transfers or as giving to the applicant for a transfer all of the fifth day preceding such election?

"To take a concrete illustration, the date of the election to determine the School Tax Rate in the City of Saint Louis is April 5, 1938. Which is the last day upon which a registered voter can be transferred, March 30th or March 31st?"

The provision of the law (Sec. 18, p. 249, L. 1937) which contains the words you desire our interpretation of reads as follows:

"Any registered voter who changes his address within the city may at any time until five days preceding any election transfer his registration by sending to the Board a signed application for transfer or by appearing in person at any office of the Board and making application for transfer. *** "

A determination of your question requires consideration of the meaning of the word "until."

The general rule for determining whether the word "until" is a word of inclusion or exclusion has been stated thus:

"No general rule can be laid down to determine whether the word 'until' is a word of inclusion or exclusion. A strictly literal definition would doubtless make it one of exclusion, but popular use is quite as likely to give it an inclusive as an exclusive sense. The use of the word in particular instances may be such as to leave no doubt as to the meaning, and, in such cases, the court will give it the meaning intended. Thus, if a lease is given until the 1st of April, there could be no question that it would expire with March; while, on the other hand, if a lender told a borrower that he could have the money borrowed until the 15th of the month, few people would doubt that repayment on the 15th would comply with the agreement."

The Supreme Court of Missouri, in the case of Jewell Realty Company vs. Dierks, 18 S. W. (2d) 1.c. 1047, has announced the following rule for determining the construction to be placed upon the word "until":

"A strictly liberal definition of the word would, no doubt, make it a word of exclusion, but we think it should be construed in relation to the subject-matter and intent of the instrument in which it is used, and from such construction determine whether or not the connection in which it is used indicates an intent to include or exclude the date named."

The general rule, therefore, seems to be that the word "until" is a word of exclusion, unless the context wherein it is used clearly indicates the opposite meaning. Following this general rule, we think that the phrase "unt'l five days preceding any election" means excluding the five days preceding any election. Had the phrase read "until the FIFTH day preceding any election", there might be argument for saying that the voter had all of the fifth day before election within which to transfer his registration, but reading as it does, we think that the Legislature clearly had in mind to give the voter up to the end of the sixth day before election to transfer his registration.

CONCLUSION

It is, therefore, the opinion of this office that a voter in the city of St. Louis cannot transfer his registration on the fifth day before any election, and that for the approaching election of April 5,

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1938, the voter will have only until the end of the day of March 30, 1938 to transfer his registration.

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Respectfully submitted,

HARRY H. KAY
Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

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