

ELECTIONS: Failure to provide proper accomodations for voting -

April 10, 1939

Mr. Walter G. Stillwell
Prosecuting Attorney
Marion County
Hannibal, Missouri



Dear Mr. Stillwell:

We wish to acknowledge your request for an opinion under date of April 7, wherein you state, as follows:

"On Tuesday, April 4th, there was held in this county an election for County Superintendent of Schools. As your office no doubt knows, well over half of the votes in the entire county were cast at Hannibal. There was only one voting precinct in the city of Hannibal, and it was impossible for the one voting place to accomodate those desiring to vote. In other words, many people refused to vote because it necessitated standing in line in some instances for well over an hour. I am asking the opinion of your office as to whether or not the impossibility of eligible voters voting because of the inadequacy of polling precincts in the city of Hannibal would in any way invalidate the election and make possible the calling of a special election for this most important office. Complaints are reaching this office in increasing numbers as to the unfairness to those desiring to vote not being able to do so and for this reason I would deeply appreciate your immediate attention to this request."

April 10, 1939

20 C. J. Section 204, page 172, states as follows:

"An election will not be declared void on the ground of insufficient accommodations for the electors at the polling place where it does not appear that the conditions at the polling place resulted in the deprivation of the right of any voter or affected, or was likely to have affected, the result of the election."

We have made a search of the authorities, and the only case we have found in point is that of Crouch vs. Ozanne 12 Australia Commonwealth Law Reports 539, l.c. 543, wherein the court said:

"It is charged that at the Bellarine booth there was insufficient accommodation for the electors--that in a small room the electors were so crowded together that it was impossible for them to vote, the result being that persons went away without voting. The room does seem to have been very small, but the petitioner has entirely failed to satisfy me that there was any deprivation of the right of any voter on account of those conditions. It is true that some few persons apparently went away at one time, but there is nothing to show that they did not come back again to vote. There is nothing to show their votes were not recorded, and, when one looks at the proportion of votes recorded at that particular place, it certainly amounts to a very fair average of the votes given throughout the electorate generally--that is to say, taking the proportion between the number of elec-

April 10, 1939

tors on the roll and the number of votes recorded. I find that at Bellarine there were 1,487 electors enrolled and there were 1,003 voting papers issued. Making allowances for any few irregularities or informalities that may have taken place in the marking of the voting papers, the proportion of votes may be taken generally to be indicated by the ballot papers issued. When I find that out of 1,487 voters on the roll 1,003 voted, it certainly does not indicate to me that there could have been any substantial number of persons prevented from voting by reason of the condition of the polling booth. It was a necessary part of the petitioner's case to show that this condition of the polling booth which he complained of did affect the result, or was likely to have affected the result, of the election. In my opinion there is nothing whatever to indicate to me that the result of the voting at that particular place was in any way substantially influenced by the condition of things which is complained of."

From the facts presented to us in the instant case, there is no showing that any voter was deliberately deprived of his vote, or that the lack of accommodations affected the result of the election. At most, the facts disclose a refusal on the part of the voters to be inconvenienced by reason of a lack of accommodations.

We are, therefore, of the opinion that unless the facts disclose that there was a deliberate intent on the part of election officials to deprive voters of an opportunity to vote by failing to provide satisfactory accommodations, or that the result of such unsatisfactory accommodations was such that it affected the outcome of the election, the election is valid.

Respectfully submitted,

MAX WASSERMAN
Assistant Attorney General

APPROVED:

W. J. BURKE
(Acting) Attorney General

MW:RT