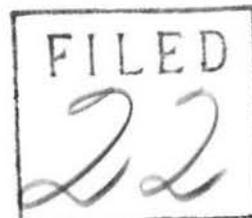


MUNICIPAL CORPORATIONS: To disincorporate a city of the
ELECTIONS : fourth class, petition must contain two thirds of qualified voters and not two thirds of registered voters.

January 24, 1940

Hon. C. W. Detjen
County Counselor
St. Louis County
Clayton, Missouri



Dear Sir:

We are in receipt of your request for an opinion, dated January 19th, 1940, which reads as follows:

"The County Court has asked me to request an opinion from you as to the meaning of the term 'legal voters' as used in Section 7065 R.S. Mo. 1929, pertaining to the disincorporation of fourth class cities, as applied to St. Louis County in the light of the permanent registration laws pertaining to that County.

"Under the permanent registration act of 1935, page 230, Section 2, it is provided that in order to vote, a person with all the other necessary qualifications must be registered in his voting precinct, and the provisions of Section 8, Laws of 1939, page 398, seem to apply the Act to voters in incorporated cities, although not to unincorporated villages.

"In one case pending before the County Court, involving the disincorporation of a fourth class city, the evidence to date seems to indicate that there are in excess of 1500 persons qualified to register under the provisions of Article 8, Section 2 of the Constitution and the general statute relating to qualifications of voters, Laws 1939, page 382, Section 10178, but that possibly only as few as 800 or so of them are actually registered. If the term 'legal voters' as used in Section 7065 is interpreted to mean those persons who have all the necessary qualifications to register and vote, then 1000 or more names are required on a petition to disincorporate, while if the term 'legal voters' means those persons who actually had a right to vote at the time the petition was filed, as duly registered voters, then only about half as many names are required on the petition.

"One side of the controversy in the cause at present pending in the County Court takes the position that all persons qualified to register are legal voters under the meaning of Section 7065, whether registered or not, while the other side takes the position that it was the intention of the legislature to leave the matter of disincorporation to the decision of those persons who are legally qualified as registered voters, i.e., the only ones, for example, who could determine the matter of disincorporation if it were left to a vote of the people rather than to the judgment of the County Court. The latter group further contends that the intention of

the legislature is indicated by the fact that in proceedings to incorporate an unincorporated town or city under Section 6095 it is necessary that a majority of the taxable inhabitants join in the petition, because it is those who will be taxed, rather than those who are qualified to vote, who will be materially affected by the incorporation; while in the case of disincorporation, there being no increase of taxes involved, the decision is left with those persons who have a right as registered voters to take part in the municipal government."

Section 7065 R. S. Missouri, 1929, reads as follows:

"The county court of any county in which a city of the fourth class is located shall have the power to disincorporate such city upon petition of two-thirds of the legal voters of such city. No city of the fourth class shall be disincorporated by virtue of this section, unless notice has been given of the intended application for such disincorporation, by advertisement published in some newspaper published in the city prayed to be disincorporated, for four weeks successively prior to such application, and if no newspaper is published in said city, then by advertising in the newspaper in such county nearest to such city; and such advertisement and notice shall contain a copy of such petition and the names of the petitioners."

It will be noticed under the above section that the petition for disincorporation must bear the names of two-thirds of the legal voters of such city.

Your request is for an opinion as to whether or not the two-thirds of the legal voters described in Section 7065, supra, means two-thirds of the registered legal voters, or two-thirds of the voters who are qualified to vote and who have not registered.

Qualifications of voters, which does not mean registered voters, is set out in Section 10178, Session Laws of Missouri, 1939, page 382, and reads as follows:

"All citizens of the United States, including 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, 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, further, no idiot, no insane person, and no persons while kept in any poor-house at public expense, except the Soldiers' Home at St. James and the Confederate Home at Higginsville, or 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 a 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."

It will be noticed under the above section that nothing is said as to the registration of the citizen, but only as to the qualifications of the citizen. It has been held that the term "legal voters" does not mean "registered voters."

In the case of Sayman v. Becker, 269 S. W. 973, l.c. 974, the court set out the facts in that case as follows:

"The petition alleges the act in question was passed by the Fifty-First General Assembly, and that within 90 days thereafter petitions purporting to be signed by 5 per cent. of the legal voters in each of eleven congressional districts were left for filing with the secretary of state, and the secretary 'thereupon duly found' the numbers of petitioners necessary for each of the districts, in order to make up 5 per cent. of the legal voters, to be stated numbers; that the number required in the Twelfth district was 2,317; 'that thereafter defendant Charles U. Becker, as secretary of state, filed the said referendum petitions after counting the names thereof, and finding the same were signed by the following number of legal voters' in eleven designated congressional districts. The numbers

given show more than enough in each district named. The number of legal signers in the Twelfth district, found by the secretary, is alleged to be 3,521. (The referee found 3,523 signatures.) The steps thereafter taken preparatory to submission are then alleged, and there is no allegation of irregularity in these. It is then alleged the secretary made his findings from the faces of the petitions and without other knowledge of the facts."

The court further said at page 978:

"* * It is to be kept in mind, also, that the expert affiants seem to proceed upon the assumption that every petitioner must have been a registered voter. This assumption is not correct either in fact or law. * * "

Also, in the case of State v. Sullivan, 224 S. W. 327, l.c. 340, the court said:

"In our judgment the words 'legal voters,' as used in section 57 of our Constitution, does not mean registered voters.

"Registration does not add to or detract from the qualifications of a voter. Such laws could not do so without doing violence to the Constitution. Such laws are but reasonable

regulations for the orderly exercise of the constitutional rights of suffrage. They are intended to and do apply solely to the exercise of the constitutional right of suffrage, and not to the exercise of any other right which a legal voter may exercise. That these registration laws are mere police regulations applicable to the act of voting only is made clear by the cases. In State ex rel. v. Mason, 155 Mo. loc. cit. 506, 55 S. W. 642, this court approved the following from the text of Judge Cooley.

* * *"

The above case is based upon the opinion in a New York case entitled In Re: Herman, 108 App. 335, 96 N. Y. 144, in which the court said:

"Objection is also made that the signers upon some of the petitions are not registered voters. I do not think it was the intention of the statute to require that an elector or voter should be registered in order to join in a certificate of independent nomination. And while the words "voter" and "legally qualified voter or elector" are used in different places, it may be fairly said to embrace a legally qualified voter. Without necessarily including his registry at the particular election, he must be legally qualified as an elector or voter at general and special elections within his district. But if he should neglect to register, and does not think that that is a qualification of an elector as used in the Constitution and funda-

mental statute of the state, and unless it would clearly appear that a statute regulating the conduct of elections intended to go to the disqualification of any particular elector or class of electors, such regulation ought not to limit the constitutional right of a voter. The statute was intended for the orderly conduct of elections, and not for the purpose of preventing citizens discharging their ordinary duties. It should be so construed as to permit such voters and electors as are recognized by the Constitution to take part in all the preliminaries of an election, and it is not necessary that he should declare his intention to vote at the election, or that he should actually intend to vote. It follows, therefore, that the objection to those signers that were not registered is not well taken."

And, in the case of *State v. Sullivan*, supra, the court further said in commenting upon the opinion in the case of *In Re: Herman*, supra, as follows:

"In other words, the registration laws are police restrictions on the exercise of the voting privilege, and are not restrictions upon any other privilege granted by the organic law. As we view it, if the signer is otherwise a legal voter, the fact that he is not at the time of signing registered is not a bar to his right to sign either an initiative or a referendum petition. The trial court erred in holding that the petition was not sufficiently signed in the Fifth and Fifteenth congress-

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sional districts."

CONCLUSION

In view of the above authorities, it is the opinion of this Department that in order to disincorporate any city of the fourth class it is mandatory that the petition for disincorporation filed with the county court must contain and bear the names of two-thirds of the qualified voters of said city, and if there is more qualified voters in said city than there are registered voters, then two-thirds of the registered voters would not be sufficient for the county court to proceed upon the disincorporation of such city.

Respectfully submitted,

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Assistant Attorney General

APPROVED:

TYRE W. BURTON
(Acting) Attorney General

WJB:RW