

ELECTIONS: In St. Louis City no registration number is required to be placed on ballots; all numbers on ballot must be covered by sticker.

October 6, 1944.



Board of Election Commissioners,
208 S. Twelfth Blvd.,
St. Louis, Missouri.

Gentlemen:

On September 7, 1944, you requested an opinion from the City Counselor of St. Louis on three questions involving the administration of the election law in the City of St. Louis. He rendered his opinion on September 18, 1944, and made there-with the suggestion that since State and National officers are involved at the coming general election the questions should also be presented to the Attorney-General for his opinion. On September 19, 1944, through the board's chief clerk the request was made for the Attorney-General's opinion.

The opinion of the City Counselor is as follows:

Gentlemen:

We have your letter of September 7th, requesting our opinion on certain questions which are, substantially, as follows:

(1) Does the law regulating registration in the City of St. Louis provide for a "registration number" such as is referred to in Section 11608, R. S. Mo. 1939, as amended by Laws 1943, page 544, and Section 11595, R. S. Mo. 1939?

(2) If such law does not provide for such "registration number", is it proper to use, in lieu thereof, the number of the voter as shown by the poll books?

(3) Is it necessary, under the provisions of Section 11607, R. S. Mo. 1939, as amended by Laws 1941, page 363, to place a sticker over the serial number on the face of the ballot, as well as over the number of the voter placed on the back of the ballot?

I.

Section 11595, R. S. Mo. 1939, which is a general provision relating to elections, provides, in part, as follows:

"Provided, that in all cities and counties which now have or may hereafter have a legal registration, the election commissioner shall cause the ballots to be printed on the same leaf with a stub not over two inches in width, and separated therefrom by a perforated line extending across the top of the ballot one inch from the top thereof. Upon the left-hand margin of the stub of this ballot shall be printed the serial number of the ballot; one-half inch to the right of this serial number shall be left a space enclosed within printed lines not less than one-fourth inch in width nor less than one inch in length in which a judge of election will write the registration number of the voter when the ballot is voted. The same number as appears on the stub shall be printed on the left-hand side of the ballot near the top, and not more than one inch below the perforated line separating the ballot from its stub. The number of each ballot shall be the same as that on the corresponding stub and the ballots and stubs shall be numbered consecutively in each city: Provided, that the sequence of numbers of such ballots and stubs shall begin with the number 1.* * * * In such precincts the election judges, at the time of separating the ballot from its stub, shall write in the space printed on this stub the registration number of the voter to whom the ballot shall be delivered. On receiving the ballot from the voter the number of the ballot voted in the order in which it is received, but no other writing except the initials of two judges as provided for in section 11602 of this chapter, shall be on the back of the ballot. All stubs shall be carefully preserved and returned with unused ballots to the office of the election commissioners. No ballots shall be torn from its stub except for delivery to a voter.* * * *"

Section 11608, R. S. Mo. 1939, as amended by Laws 1941, page 543, is, in part, as follows:

"The judge to whom any ticket shall be delivered shall, upon receipt thereof, pronounce in an audible voice the name of the voter; and if the judges shall be satisfied that the person offering to vote is a legal voter, his ticket shall be numbered and

placed in the ballot box without inspecting the names written or printed thereon, or permitting any other person or persons to do so; and the clerks of election shall enter the names of voters and the numbers of the ballots, in the order in which they were received, in the poll books, in conformity with the form printed in section 11490, and, in addition, whenever a registration is required by law, place on such ballot the number corresponding with the number opposite the name of the person voting, found on the registration list; and no ballot not so numbered shall be counted; * * * *."

Up to the year 1895, the registration laws applicable to the City of St. Louis provided for a registration number for each voter registered.

Section 989, R. S. Mo. 1939, (Laws of 1883, page 39, amended), applicable to cities of the first class, provided that,

"The registration books and the registration lists or poll-books, as hereinafter provided to be delivered to the judges of election, shall be in the following form: * * *".

The form then follows and its first column bears the designation, "Registration NO."

In 1895 (Laws 1895, Special Session, p. 15), the Legislature enacted a new law, applicable to St. Louis, providing for a Board of Election Commissioners, and, in detail, a system of registration. This law made no provision for a registration number. It was so held by the Supreme Court, in banc, in *Timmonds v. Kennish*, 244 Mo. 318, 1.c. 324.

Thereafter, the laws regulating registration in St. Louis were changed from time to time until the Permanent Registration Act was passed in 1937 (Laws 1937, p. 235; R. S. Mo. 1939, Chapter 76, Article 24.)

An examination of all of these laws since 1895 reveals that, in none of them is a "registration number" required. This being so, we think the question is ruled by *Timmonds v. Kennich*, supra. That suit was a contest brought by plaintiff to challenge the election of defendant as Judge of the Supreme Court. Defendant had been declared elected on the official returns. The Court says (1.c. 320):

"It is conceded by defendant that none of the votes cast in the city of St. Louis in the election of 1910 had the registration number of the voter indorsed thereon. It is further conceded that without the vote of St. Louis plaintiff would have been elected, as he had a majority of the vote cast in the State outside said city. The case, then, depends upon whether the absence of the registration number of the voter in the city of St. Louis on his ballot invalidated his vote. If it does, then the entire vote in St. Louis must be thrown out, and the office given to plaintiff. * * *"

And, further, (l.c. 327 and 328):

"* * *The law does not require an impossible thing to be done. It is obviously impossible to indorse upon a ballot a number that does not exist, and hence the manifest nonapplication of section 5905 to this situation, and its no less manifest inconsistency with the special law governing elections in the city of St. Louis.

"* * *

"Since the passage of the act of 1895 the election officials of the city of St. Louis have construed the law to require no registration book, and, consequently, no such number on the ballot. This construction has been acquiesced in by the entire community, including candidates defeated for office, up to the time of the institution of this contest. In 1903, after eight years of such construction, the Legislature substantially re-enacted the law in this regard, without providing for any registration number. These facts are of great persuasive force. We ought not to render a judgment reversing this settled construction - a judgment which would disfranchise the entire voting population of St. Louis - unless constrained to do so by a mandate of the statute which is of clear, certain and undoubted construction to that effect. We find none such. On the contrary, we can reconcile the somewhat disjointed election statutes, only by holding that the law applicable to St. Louis (section 6220) is in harmony with section 5899 of the general law which forbids any indorsement on the bank

of the ballot save the initials of the judges and the voting number, and is inconsistent with section 5905, which provides for a registration number."

Under the present registration law, as under the registration law under consideration in the Timmonds case, no provision for a "registration number" is made, and, as said in that case, "The law does not require an impossible thing to be done."

Under the authority of the Timmonds case, therefore, we are of the opinion that, in St. Louis, no "registration number" is required to be put upon the ballot stub and that the provision of the statute requiring the placing of a "registration number" on the ballot stub is inapplicable to St. Louis.

II.

You next inquire whether it is proper to use, in lieu of a "registration number", the number of the voter as shown by the poll books. In our opinion, such use is not proper or permissible.

The law is vitally concerned with preserving the secrecy of the ballot, and, to this end, specifies with particularity the markings that may be placed upon the ballot and stub. It provides that the number of the voter, as shown by the poll book, shall be placed on the back of the ballot, along with the initials of the judges. No provision is made for the marking of that number at any other place, either on the ballot or the ballot stub, and, in the absence of such provision, your Board is without authority to place such number in the space on the stub provided for the "registration number."

III.

You next inquire whether it is necessary, under the provisions of Section 11607, R. S. Mo. 1939, as amended by Laws of 1941, p. 363, to place a sticker over the serial number on the face of the ballot, as well as over the number of the voter placed on the back of the ballot.

Section 11607, R. S. Mo. 1939, is as follows:

"Every ballot shall be numbered in numerical order in which received, and it shall be the duty of the election judges, in the presence

of the voter, before any ballot is placed in the ballot box, to cover or conceal securely the identifying number or numbers placed on the ballot by placing over the number or numbers, and pasting down, a black sticker, which sticker is to be two inches square with gummed edges extending three-eighths ($3/8$) of an inch towards the center of the square, so as to conceal but not destroy, the number or numbers placed thereon. Such stickers shall be supplied to the election judges by the County Clerk or Board of Election Commissioners of each county or city, and no sticker shall be removed except in case of contested elections, grand jury investigations, or in the trial of all civil or criminal cases in which the violations of any law relating to elections, including primary elections, is under investigation or at issue and then only on the order of a proper court or judge thereof in vacation. No judge of election shall deposit any ballot upon which the names or initials of the judges, as hereinbefore provided for, do not appear."

In 1941, the Legislature amended this Section to read, in part, as follows (Laws 1941, p. 363):

"Section 11607. Ballots to be numbered and numbers covered--sticker to be removed, when.---
Every ballot shall be numbered in numerical order in which received, and it shall be the duty of the election judges, in the presence of the voter, before any ballot is placed in the ballot box, to cover or conceal securely the identifying number or numbers placed on the ballot by placing over the number or numbers, and pasting down, a black sticker, which sticker is to be two inches square with gummed edges extending three-eighths ($3/8$) of an inch towards the center of the square, so as to conceal but not destroy, the number or numbers placed thereon.* * *
No judge of election shall deposit any ballot upon which the names or initials of the judges, as hereinbefore provided for, do not appear,"

It will be noted that the stickers are required to be placed over "the number or numbers", so as to conceal "the identifying number or numbers placed on the ballot."

It is a rule of the construction of statutes that effect must be given, so far as possible, to each word, phrase and sentence, and it must be held that the Legislature contemplated that,

in certain instances there would be only one number to be covered, while, in others, there would be more than one number to be covered.

Section 11595, R. S. Mo. 1939, provides that no writing, other than the judges' initials and the number of the voter as appears on the poll book, shall be on the back of the ballot. This is the same section that requires that the "registration number" shall be placed on the stub.

Section 11608, R. S. Mo. 1939, (Amended Laws 1943, p. 543) provides, in part, that,

"* * * the clerks of election shall enter the names of voters and the number of the ballots, in the order in which they were received, in the poll books, in conformity with the form printed in Section 11490, and, in addition, whenever a registration is required by law, place on such ballot the number opposite the name of the person voting, found on the registration list; and no ballot not so numbered shall be counted;* * *"

Whether this requires the "registration number" on the back of the ballot, notwithstanding the provisions of Section 11595 (supra), we need not determine, since we have already concluded that, in St. Louis, no "registration number" is provided for or required.

It may be the framers of Laws 1941, p. 363, construed the law as requiring, in some election districts, a "registration number", as well as a poll number on the back of the ballot and, for that reason, used the phrase "number or numbers placed on the ballot."

Be that as it may, we have seen that, in St. Louis, there can be only one number on the back of the ballot, that is, the poll number. However, another number does appear on the ballot - the serial number, on the face thereof. Shall the Board require that a sticker be placed over this number?

The statute has as its sole purpose the preservation of the secrecy of the ballot, and should, in our opinion, be so construed as to best achieve that purpose. Section 11595 provides that the ballots and stubs shall be numbered consecutively and that the sequence of numbers of such ballots and stubs shall begin with the number 1. It is obvious that one present at the polls when the ballot is handed out is in a position to identify, when the ballots are opened, the ballot of a particular voter by the serial number, unless such number is concealed. The ballots have consecutive serial

numbers, and are required to be given out serially. Likewise, the voters are numbered consecutively in the poll book. It is, therefore, possible for a person in the polling place having access to the poll books, to determine the serial number of a particular voter by matching his poll number with the serial number, having due regard to the number of spoiled and returned ballots, and, in this manner, be able to identify the ballot when opened for counting.

It is, therefore, our opinion that a construction of the statute consistent with its end and purpose requires the serial number to be concealed. Obviously, this cannot be done after the ballot has been prepared and returned to the judges, as this would entail opening the ballot and revealing its markings. It can only be done after it has been torn from its stub and before it is received by the voter. With both the poll-number on the back and the serial number on the face covered and concealed, there would seem to be no possible means of identification and the purpose of the statute would be fully and completely accomplished.

To recapitulate, then, our opinion is as follows:

(1) No "registration number" is provided for or required in St. Louis and the space on the stub provided for its insertion should be left blank.

(2) It is not proper or permissible to insert the poll-number in the space on the ballot stub provided for the "registration number."

(3) The Board should require that, before the ballot is received by the voter, a sticker be placed over the serial number on the face of the ballot; and then, when the ballot is returned by the voter, to the judge, that the poll-number is put on the back of the ballot and another sticker put over this number.

Inasmuch as the election of national and state officers is involved in the November election, we believe your Board should present this matter to the Attorney-General of the State, and enclose an extra copy of this opinion for transmittal to him in connection with your request for his opinion.

Very truly yours.

We have examined this opinion, reviewing the authorities cited therein and have made independent research on these subjects, and are of the view that the conclusions reached therein are correct and are amply supported by the statutes as construed by the courts.

Respectfully submitted,

LAWRENCE L. BRADLEY
Assistant Attorney-General

APPROVED:

VANE C. THURLO
Acting Attorney-General.

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