

INTOXICATING ALCOHOLIC  
LIQUORS:

A city council is charged with the duty of determining whether a petition calling for an election to decide whether intoxicating liquor shall be sold by the drink, bears a number of names representing one-fifth of the qualified voters in such city, but the city council is not bound to follow any particular method in reaching such a determination.

June 25, 1951

Honorable Raymond H. Vogel  
Prosecuting Attorney  
Cape Girardeau County  
Farmers & Merchants Bank Building  
Cape Girardeau, Missouri

6-26-51  
**FILED**  
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Dear Sir:

Your recent request for an official opinion has been assigned to me to answer. You thus state your opinion request:

"There has been circulated in the City of Cape Girardeau a petition to secure an election to determine whether or not intoxicating liquor by the drink may be sold in Cape Girardeau. Section 311.110 of the Revised Statutes of Missouri, 1949, provides that 'upon application by petition signed by one-fifth of the qualified voters of any incorporated city, who are qualified to vote for members of the legislature...', the city counsel shall order such election. The said Section 311.110 contains a proviso in the last paragraph thereof which states 'provided further that the board of alderman, city counsel or other proper officers shall determine the sufficiency of the petition presented by the poll books of the last previous city election.'

"The question is, how can the city counsel of the City of Cape Girardeau determine the sufficiency of the number of signers of the petition. How many signatures of qualified voters must the petition contain before it is sufficient? Shall it be one-fifth of the names of voters contained in the poll books of the last previous city election or shall it be one-fifth of the names presently contained on the registration list of the City of Cape Girardeau?

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"The population of the City of Cape Girardeau is a little over twenty-one thousand but there are over eighteen thousand names contained in the registration books of that city.

"Due to the great interest in this matter, I should appreciate having your Opinion as soon as possible."

The law of Missouri regarding elections in incorporated cities to determine whether or not intoxicating alcoholic liquor shall be sold by the drink in such cities is found in Section 311.110, RSMo 1949, which section reads:

"Upon application by petition signed by one-fifth of the qualified voters of any incorporated city, who are qualified to vote for members of the legislature in such incorporated city of this state, the board of aldermen, city council or other proper officials of such incorporated city shall order an election to be held in such incorporated city, at the usual voting precincts for holding any general election for state officers, to take place within forty days after the receipt of such petition, to determine whether or not intoxicating liquor, as defined in this chapter, other than malt liquor containing not to exceed five per cent of alcohol by weight, shall be sold, furnished or given away within the corporate limits of such incorporated city; such election shall be conducted, the returns thereof made and the results thereof ascertained and determined in accordance in all respects with the laws of this state governing general elections for city officers, and the result thereof shall be entered upon the records of such board of aldermen, city council or other proper officials, and the expense of such election shall be paid out of the city treasury, as in the case of an election for city officers; provided that at an election held under the provisions of this section, no one shall be entitled to vote who is not a resident of such incorporated city, or who is not a qualified

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"voter of such incorporated city; provided, that no such election held under the provisions of this section shall take place on any general election day, or within sixty days of any general election held under the constitution and laws of this state, so that such elections as are held under this section shall be special elections and shall be separate and distinct from any other election whatever; provided further, that the board of aldermen, city council or other proper officials shall determine the sufficiency of the petition presented by the poll books of the last previous city election."

(Underlining ours.)

It will be noted that Section 311.110 (quoted above) states that the petition must be signed by one-fifth of the "qualified voters of any incorporated city who are qualified to vote for members of the legislature in such incorporated city \* \* \*."

Cape Girardeau, an incorporated city, by virtue of the fact that it has a population in excess of 10,000, is required by the laws of Missouri to have registration of voters. It does, and for many years, has required registration. In those cities where registration of voters is required no person is permitted to vote who is not registered. Therefore, it is plain that any person who is "qualified to vote for members of the legislature in such incorporated city \* \* \*," must be registered. In other words, in order to be a qualified voter in such a city, one must be registered.

If Section 311.110, supra, had stopped at this point it would be clear that the petition would have to be signed by a minimum number of voters equal in number to one-fifth of the number of registered voters. However, Section 311.110 goes on to add, in its concluding lines, "provided further, that the board of aldermen, city council, or other proper officials shall determine the sufficiency of the petition presented by the poll books of the last previous city election." In determining the meaning and applicability of the concluding lines of Section 311.110 (quoted above) we would direct attention to the case of *Bine v. Jackson County*, 266 Mo. 228. This case was a contest of a local option election held in that portion

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of Jackson County outside of Kansas City and Independence, in which election a majority of the votes cast were against the sale of intoxicating liquor. Thereafter said Bine filed a notice to contest this said election alleging as one of several reasons, that: "Said petition was not signed by one-tenth of the qualified voters of said county outside of the corporate limits of said cities who voted at the last previous general election and whose names appear on the poll books of said election, and the county court did not so find in its order." The trial court found in favor of contestant Bine and Jackson County appealed to the Supreme Court of Missouri, which reversed the trial court and held that the election conformed to all statutory requirements. In its opinion the Court held that as long as the petition was signed by the requisite percentage of qualified voters it was sufficient; that the names of those persons signing need not be names of persons which appeared on the poll books of the last previous election; and that the county court was under no obligation, in determining whether the petition was signed by the requisite number of qualified voters, to be guided in this determination, by the poll books alone. In reaching these conclusions the Court said, in part, l.c. 238, 239:

"\* \* \* It is clear, therefore that the purpose of the statute was simply to point out, as an aid to the finding of the court, an accessible and presumptively correct list of voters which it could use without further inquiry as evidence of the number of qualified voters then living in the county.

"\* \* \* We know judicially, and the Legislature knew, that the poll books are not, and cannot in the nature of things be, an infallible enumeration of the qualified voters in any county where registration previous to voting is not prescribed by law. What the provision intended was that nothing else appearing the county court must find by poll books whether or not the petition was sufficient to show that it was signed by one-tenth of the qualified voters residing in the county. For it was to them the statute gave the right by proper application to compel the calling of an election.

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"To simplify the investigation which the county court is directed to make and to further the object of the petitioners to put the issues of local option before the people, the statute inserted the proviso that the county court should consider the prima-facie evidence of the poll books as to the qualifications and number of the petitioners, but it nowhere in words or by necessary implication confined the view of the county court to the poll books alone."

It will be noted that in the above quoted excerpts of the opinion, the Court said: "What the provision intended was that nothing else appearing the county court must find by poll books whether or not the petition was sufficient \* \* \*." In the instant case there is something else appearing as a guide to the city council, to-wit, the registration list.

In view of the Bine opinion, and the facts in the instant case, it is our belief that the city council, indetermining the sufficiency of the number of names attached to the petition, is charged with the final duty of determining the adequacy of the petition from the standpoint of whether or not it is signed by the required percentage of qualified voters, but that the city council is not bound to follow any particular method in so determining.

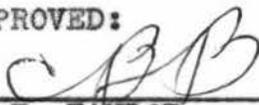
#### CONCLUSION

It is the opinion of this department that the city council is charged with the duty of determining whether a petition, calling for an election to decide whether intoxicating liquor shall be sold by the drink, bears a number of names representing one-fifth of the qualified voters in such city who are qualified to vote for members of the legislature, but that the city council is not bound to follow any particular method in reaching such a determination.

Respectfully submitted,

HUGH P. WILLIAMSON  
Assistant Attorney General

APPROVED:

  
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J. E. TAYLOR  
Attorney General

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