

ELECTIONS: Person may vote for single candidate for congressman or city councilman if he desires, even though more than one office is to be filled from candidates for congressmen or city councilmen.

May 20, 1952

5-21-52

Mr. James M. Peery
Financial Secretary
Boot and Shoe Workers' Union
No. 521
608 Franklin Street
Moberly, Missouri



Dear Sir:

This is in answer to your letter of recent date requesting an official opinion of this department and reading as follows:

"In the next election if congressmen have to run at large the same question will come up. If we did not vote for eleven congressmen and voted for one could our ballot be thrown out by the election judges and not counted.

"In a recent city election under the City Manager Form of Government two councilmen were to be elected. There were three candidates for councilmen which were as follows: Earl B. Noel, Allen C. White, James E. Burton.

"Some of the members wanted to know if they could vote for one councilman only for example James E. Burton and scratch the other two."

The question of whether or not a person can vote for a single candidate for an office to which more than one person is to be elected at a single election is answered,

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we believe, by the case of Riefler v. Kamp et al., 247 S.W. 2d 333, where the court was passing on an election for the office of city councilman of Wellston, Missouri. The court said l.c. 335:

"This is an election contest for the office of City Councilman for the Second Ward of the City of Wellston, Missouri, growing out of an election held in said city on April 4, 1950. This was the first election to be held in said city and two councilmen were to be elected from the second ward, the candidate receiving the highest number of votes being elected for a two year term and the candidate receiving the next highest being elected for a one year term."

(Emphasis ours.)

The court further said l.c. 336:

"Ballot No. 10 is challenged by contestee because of the manner in which it is marked. In the space provided for the names of candidates for councilman the voter made marks in only one square, the one before the name of contestant." (Emphasis ours.)

Ballot No. 10 was held to be valid by the court at l.c. 337, where the court said:

"The logical conclusion is that the voter was retracing the cross marks in these two instances in order that it might be more clearly seen. It may have been because of his poor eyesight or bad lighting conditions in the voting booth. This did not spoil the ballot and it should be counted as a vote for contestant."

The court said regarding ballot No. 5, l.c. 337:

"Objection is made to ballots numbered 3, 5, 7 and 8 because of the marking

used by the voter. On each ballot the voter used in the square before the voter's name a mark commonly referred to as a check mark. This might be described as a form of and resembling the letter V. On ballot No. 3 this mark is placed in the square before the name of contestee and in the square before the name of William Kamp. On ballot No. 5 it appears before the name of contestant only. On ballot No. 7 it appears before the names of contestee and Mrs. Harry Perkins. On ballot No. 8 it appears before the names of contestee and Mrs. Harry Perkins. On each ballot the mark is placed in the square before the name of one candidate for each of the other offices appearing on the ticket. From this it will be observed that if these ballots are counted contestant will receive one vote and contestee three votes." (Emphasis ours.)

Such ballot was held to be valid by the court, which said, l.c. 340:

"We conclude that where two reasonably straight lines meet within the voting space at an angle of less than ninety degrees, forming a solid juncture so that the end of one line also forms the end of the other line, the voter has substantially complied with the statute and the vote should be counted, unless objectionable for other reasons. Each of the questioned ballots in this case meets this test and should be counted." (Emphasis ours.)

Although such ballots were not challenged on the specific ground that more than one person should have been voted for at such election, the fact that the court held the ballots which disclosed a vote for only one candidate to be valid is

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a finding by the court that such ballot was valid in all respects. The reasoning in this case, we believe, is equally applicable to an election for congressmen at large. We therefore hold that a person may cast a valid ballot for a single candidate for an office at which more than one candidate is to be elected.

CONCLUSION

It is the opinion of this department that where more than one councilman is to be elected and where more than one congressman is to be elected, and voters may vote for several of such councilmen or congressmen, that a voter may legally vote for a single candidate for councilman or congressman if he so desires.

Respectfully submitted,

C. B. BURNS, JR.
Assistant Attorney General

APPROVED:



J. E. TAYLOR
Attorney General of Missouri

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