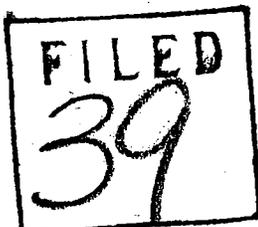


ELECTIONS: In cities of ten thousand, person must  
VOTERS: be registered in order to be eligible  
ABSENTEE BALLOTS: to cast absentee ballot.  
REGISTRATION OF VOTERS:

October 26, 1956



Honorable Rex A. Henson  
Prosecuting Attorney  
Butler County  
Poplar Bluff, Missouri

Dear Mr. Henson:

This is in response to your request for opinion dated October 19, 1956, which reads, in part, as follows:

"As I understand it, in a recent opinion you held that the voters in a city such as Poplar Bluff would not be entitled to vote in the general election next month unless they were registered under the new registration law. We now have numerous requests by mail in the County Clerk's Office of this city from people who reside outside of the State of Missouri and who give their voting precinct as a ward within the City of Poplar Bluff for an absentee ballot for the general election and a check with the registration records shows that many of these people are not registered under the new registration law.

"It was my first impression that these people would not be entitled to vote since they are not registered and that mere absence from the state would not excuse them from this registration, and I so informed the County Clerk. Today, however, I had a discussion of the matter with our Circuit Judge and we examined the election laws together and there is now a question in our minds as to whether or not these people are entitled to vote, and we would like an opinion on this question.

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"We have read Section 111.060 of the Revised Statutes which gives the qualifications of a voter; Section 112.010 gives the qualifications of an absentee voter; Section 116.020 contains the qualifications a person must have to register and vote; and Section 116.130 sets out the persons who can vote on election day.

"It appears to us at this time that although the revision in the law probably intended to require all voters including absentee voters to register before they were entitled to vote, the law does not prohibit an unregistered voter from voting by absentee ballot.

"We arrived at this conclusion after reading all of the statutes setting out the qualifications of the voters and then noticing in the restrictions that those voters are restricted who appear at the polling place on election day, but the restriction says nothing about the voter who makes his application by absentee ballot.

"Since the election is a little over two weeks away, you, of course, see the necessity for an immediate opinion on this question, and we would appreciate your assistance as soon as possible."

The first sentence of the above-quoted portion of your opinion request indicates a possible misunderstanding of the opinions rendered by this office with regard to the requirement for registration of voters in cities such as Poplar Bluff. Although it is not part of your problem, but in order to eliminate potential confusion, we are enclosing herewith copy of an opinion of this office rendered to Scott O. Wright under date of August 3, 1955, wherein it was held that persons in cities of ten thousand or over who were registered prior to July 1, 1955, are not obliged to reregister under Senate Bill No. 297 of the 68th General Assembly. Subsequently this office rendered a supplementary opinion on September 6, 1955, to Joseph M. Bone, a copy of which we are also enclosing for your assistance.

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The question raised here, in our opinion, arises because of an erroneous effort to apply Section 116.130, RSMo 1949, to the casting of absentee ballots. That section merely prescribes certain things that must be done by the voter who appears at the polls and by the regular judges of election. It must be remembered that the regular judges of election have nothing to do with the opening or counting of absentee ballots or with the determination of the validity of an absentee ballot. Consequently, we do not believe that Section 116.130 is applicable in any way to the casting of absentee ballots or has any bearing on the question of whether a voter must be registered in order to vote absentee. In order to make this determination it is necessary to look first to the laws governing absentee ballots.

Section 112.010, RSMo 1949, provides that any person being a "qualified elector," other than a person in military or naval service, who expects to be absent from the county in which he is a qualified elector on election day or who is prevented from going to the polls because of illness or physical disability may vote an absentee ballot as provided in that chapter.

Section 111.060, RSMo 1949, sets forth the general qualifications of voters, and Section 116.020, RSMo 1949, applicable to cities of ten thousand or over in counties not having a provision for registration of voters, establishes the further qualification that such voter be registered in the precinct of which he is a resident.

Section 112.060, RSMo 1949, provides for the appointment of persons for the purpose of opening and counting the absentee vote. That section goes on to provide that:

"The persons so appointed shall take the oath prescribed for the regular judges of election and shall at once proceed to open, canvass and count such votes and, having determined that such absent voter or voters are entitled to vote in the respective precincts wherein he or they offer to vote and having been fully satisfied thereof, they shall certify to the county clerk or to the election commissioners, as the case may be, the number of qualified votes to be counted for each of the respective candidates voted for in such election precinct,  
\* \* \*" (Emphasis ours.)

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It is to be noted also that in the affidavit required of an absentee voter in Section 112.040, RSMo 1949, he is, among other things, required to swear that he is a resident of the precinct or ward in which he offers to vote and that he is "lawfully entitled to vote in such ward or precinct." By reference to Sections 111.060, 112.010 and 116.020, RSMo 1949, he would not be a qualified elector and lawfully entitled to vote in such ward or precinct unless he had registered therein. In the case of State ex rel. Woodson v. Brassfield, 67 Mo. 331, 336, the court said:

"While the registration law was in force, they only were qualified voters whose names were placed on the registration books. This was the final, qualifying act, and no matter if a citizen possessed every other qualification, if not registered, he was not a qualified voter. It was not the right to register which constituted one a qualified voter, but the fact of being registered as such, was also essential. A qualified voter is one who by law, at an election, is entitled to vote. If, by the law, a person was not entitled to vote, whether in consequence of a disability which deprived him of the right to register, or of his neglect to register with a perfect right to do so, he was equally disqualified. \* \* \*"

We are further aided in this construction by reference to Laws of Missouri, 1944, page 27, Section 10 (§112.310, RSMo 1949), which reads as follows:

"Any elector authorized to vote under the provisions of this Act may vote an 'official war ballot' without complying with the provisions of the registration laws of the precinct of his residence."

(We have quoted directly from the laws because of a typographical error in the revision.)

Because of this latter express exemption of voters casting war ballots from the provisions of the registration laws and the

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absence of a similar section applicable to regular absentee voters, we can only conclude that it was not the intention of the Legislature to exempt regular absentee voters from such requirements.

CONCLUSION

It is the opinion of this office that in cities of ten thousand or more in counties not having a provision for registration of voters a voter in order to be eligible to cast an absentee ballot, other than an absentee war ballot, must be registered in the precinct in which he offers to vote.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, John W. English.

Yours very truly,

JOHN M. DALTON  
Attorney General

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