

ELECTIONS: Persons registered under old law may vote at primary in Jackson County in 1956.



July 30, 1956

Mr. J. Vivian Truman  
Chairman, Jackson County Board  
of Election Commissioners  
Jackson County Courthouse  
Independence, Missouri

Dear Mr. Truman:

This opinion is submitted in reply to your recent inquiry regarding the conduct of the coming primary election in Jackson County outside of Kansas City.

Your Board has announced that persons who had registered under the prior registration law and who have not re-registered under the permanent registration law, enacted by the General Assembly in 1955, will be permitted to vote at the primary election on August 7, 1956. This announcement has been challenged and you have requested our opinion on the matter.

Prior to July 8, 1955, there was in effect in Jackson County (in all references herein to Jackson County the city of Kansas City is excluded) a system of registration of voters which required a general re-registration prior to each presidential election. That requirement was found in Section 113.670, RSMo, 1953 Supp., Laws of Missouri, 1951, page 817, and read, in part, as follows:

"The board of election commissioners and said judges and clerks shall constitute the board of registry and the judges and clerks of each precinct shall first meet under direction and control of the board of election commissioners in their respective precincts on Tuesday, five weeks before the next state, primary or general, election at the places designated by the board of election commissioners and then proceed to make a general registration of all voters in their respective precincts. The second day of registration being on Saturday following and

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the third Tuesday, three weeks before such election. A general registration shall be made by the board of registry in every year thereafter in which a presidential election occurs and just prior thereto the first day of such registration being on Tuesday, four weeks before such election and the second day of such registration the Saturday following and the third day Tuesday three weeks before such election; \* \* \*

Registration had been effected pursuant to the provisions of that act. Had the act remained in effect, the registration therein provided for would have been sufficient to entitle a person to vote at the primary election this year, re-registration not being required until four weeks before the November election.

However, by House Bill No. 414 of the 68th General Assembly, the above provision and all other provisions of the previous law relative to the registration of voters in Jackson County were repealed and a new system of permanent registration enacted (Sections 113.490 - 113.870, RSMo, 1955 Cum. Supp.). Said act contains the following provisions:

Sec. 113.490. "As used in sections 113.490 to 113.870, the following terms mean:

\* \* \* \* \*

(2) 'Board', when used alone, the board of election commissioners;

(3) 'Election', any general, special, municipal or primary election, unless otherwise specified;

\* \* \* \* \*

Sec. 113.500. "In all counties of this state now having, or which hereafter may have, four hundred fifty thousand inhabitants or over, there shall be a registration of all qualified voters; and the conduct of elections held in such counties shall be governed by the provisions of sections 113.490 to 113.870; \* \* \*"

Sec. 113.670. "The board shall constitute a continuing and continuous board of registry with full power and authority to register any

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qualified voter in any precinct in the county at the office of the board or at such places as the board may designate. The board may designate registration days from time to time as the convenience of the inhabitants may require. Registration for any election shall be closed at the close of office hours on the third Wednesday prior to the day of election. \* \* \*

Sec. 113.850. "The vote of no person shall be received by the judges whose name does not appear upon the register as a qualified voter. \* \* \*

Said act also contained an emergency clause, which recited:

"Section 2. Because of the large volume of detailed work necessary to effect the purpose of this act in setting up a permanent registration of voters and the need for sufficient time to accomplish a general and permanent registration in time for the orderly conduct of the next general election in the county, this act is necessary for the immediate preservation of the public peace, health and safety, and an emergency exists within the meaning of the constitution; and this act shall be in full force and effect on and after its passage and approval."

The act was approved by the Governor on July 8, 1955, and by the terms of Section 29, Article III of the Constitution of Missouri, 1945, became effective on that date.

Section 1.020(3), RSMo 1949, provides:

"(3) 'General election' means the election required to be held on the Tuesday succeeding the first Monday of November, biennially."

The language of the emergency clause clearly indicated that the Legislature was primarily concerned that the system of permanent registration provided in House Bill No. 414 should be in effect at the general election to be held on November 6, 1956. The problem thus arises as to what the situation is with regard to the primary election to be held in August. Must all persons have re-registered

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prior to that time under the new system in order to be qualified to vote at the primary election, or did the Legislature reserve to persons registered under the old system the right which they would have had thereunder to vote at the primary election this year without the necessity of re-registration?

In resolving this problem, there is a fundamental proposition which has been universally employed by the courts in the construction of election statutes. Such proposition has been stated as follows (29 C.J.S., Elections, Sec. 7, p. 27):

"Election laws will be strictly enforced to prevent fraud, but ordinarily will be construed liberally in favor of the right to vote. All statutes tending to limit the citizen in his exercise of the right of suffrage should be liberally construed in his favor. Where the elective franchise is regulated by statute, the regulation should, when and where possible, be so construed as to insure rather than defeat the exercise of the right of suffrage. Technicalities should not be used to make the right of the voter insecure. No construction of a statute should be indulged that would disfranchise any voter if the law is reasonably susceptible of any other meaning."

The right to vote is conferred upon citizens of Missouri meeting the qualifications prescribed by Section 2 of Article VIII of the Constitution of Missouri, 1945. Such right is, however, subject to legislative regulation. The Legislature is expressly authorized to enact statutes requiring the registration of voters (Sec. 5, Art. VIII, 1945 Const.). Insofar as we have been able to ascertain, no court in Missouri has passed upon the nature of the right of a voter who has registered under a law providing for registration for a limited period of time when the law has been changed prior to the expiration of such time. However, courts in other states have recognized that a voter who has complied with statutory requirements regarding registration thereby acquires a vested right to exercise the franchise subject to disqualification for other causes during the period of registration. In the case of *Ash v. Superior Court of San Bernardino County*, 33 Cal. App. 800, 166 P. 841, 1.c. 842, the court stated:

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" \* \* \* Primarily the register of elections is a public record created for the purpose of identifying qualified electors, in order to safeguard elections and preserve the purity of the ballot box. But it is equally true that a qualified elector who complies with the law has the personal right to have his affidavit of registration received and filed, and that it shall for the lawful period remain a part of the register. After his affidavit has been received and has become a part of the register of elections, he cannot be deprived of this right without some procedure which complies with the requirements of due process of law. \* \* \*"

The court further stated:

" \* \* \* But if it be held that a valid judgment may be entered compelling the clerk to cancel a registration in an action wherein the person affected is not made a party defendant, such judgment would effectively stand in the way of any procedure against the clerk to compel recognition of the registered person's rights. He would have been deprived of a vested right without any opportunity to defend that right, and yet there would be no further legal remedy. \* \* \*"

Under the view of the court in that case, voters in Jackson County had acquired a vested right to remain on the register until after a primary election to be held this year. The Legislature was undoubtedly aware of the previously existing registration when it enacted House Bill No. 414. The language of the emergency clause, which may be considered in arriving at the legislative intent (82 C.J.S., Statutes, Sec. 345, p. 705), clearly indicated an intention on the part of the Legislature not to impair the rights of voters to participate in elections prior to the general election to be held this year, and it expressly indicated that it desired the new registration to become effective at that time. Thus, it appears to us that the Legislature has recognized the right of such persons and has sought to avoid possible constitutional questions which might have arisen should the Legislature have attempted to impair such right. Clearly, if such right were a vested right, the repeal of the former law could not impair such right without violating state and federal constitutional provisions. As stated in 16 C.J.S., Constitutional Law, Section 223, page 1182:

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"Any right conferred by statute may be taken away by statute before it has become vested, but after a right has vested, repeal of the statute or ordinance which created the right does not and cannot effect such right."

See also Section 1.170, RSMo 1949; Section 13 of Article I, Constitution of Missouri, 1945.

(We must, of course, recognize that any right conferred upon a voter in such circumstances is not a wholly unqualified one because, otherwise, the conclusion would be required that should permanent registration once be enacted, the Legislature would be powerless to provide as to persons registered under such system that more frequent registration would be required. Such, however, is not the question presently presented.)

Thus, we have a situation in which although the Legislature might, had it seen fit, not have given recognition to the right of voters registered under the old law, it chose, quite possibly, in order to avoid constitutional questions, to recognize the right of voters under the old law. Such is, we feel, the only proper construction and effect which can be given to the emergency clause which was a part of House Bill No. 414. The Legislature having seen fit to recognize such right, we feel that the Jackson County Board of Election Commissioners is entirely justified in its position that for the 1956 primary election persons registered under the prior law retain the right to vote at such primary by virtue of such registration.

#### CONCLUSION

Therefore, it is the opinion of this office that persons registered under the previously existing registration law in Jackson County whose registration, but for the enactment of House Bill No. 414 of the 68th General Assembly, would have continued in effect until after the August 7 primary election are eligible, by virtue of such registration, to vote in such primary election.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Robert R. Welborn.

Yours very truly,

JOHN M. DALTON  
Attorney General

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