VOTERS:
REGISTRATION OF VOTERS:

A registered voter in Class II, III and IV counties whose name is changed must reregister in order to vote. Such person may reregister at any time. County Clerk shall not cancel or reinstate any registration within five days prior to election except by order of Circuit Court.

Opinion No. 10 (62) No. 282 (61)
Mansur

April 11, 1962

Honorable Harold L. Volkmer
Prosecuting Attorney
Marion County
Hannibal, Missouri

Dear Mr. Volkmer:

In your letter of August 4, 1961, you requested an opinion from this office in the following language:

> "1. Must a person, who is registered to vote under Chapter 116, R.S.Mo., and who thereafter because of marriage or other reasons lawfully changes his or her surname, re-register under his or her new surname in order to be entitled to vote at any subsequent election in which the registration books are used.
>
> "2. May a person who is registered under Chapter 116, R.S.Mo., and thereafter lawfully changes his or her surname during the closed period for registration, under Section 116.030, R.S.Mo., vote at the election for which the books were closed, using his or her former surname or new surname.
>
> "3. By what process and at what time may the official in charge of the registration books remove registration cards from the registration books."

Chapter 116, RSMo 1959, governs the registration of voters in cities of 10,000 or more population in class two, three and four counties, and the answer to the questions you submit will be governed by this chapter.

Section 116.010, RSMo 1959, provides there shall be a registration of qualified voters under the provisions of Chapter 116 in every city containing at least 10,000 inhabitants located in a county not having county-wide registration. It further provides:

> "After so registering, a qualified voter shall not be required to register again unless obliged to do so by the terms of this chapter. The registration of any voter may be changed, canceled or transferred only as provided in this chapter."

Section 116.020, RSMo 1959, provides:

> "Every citizen of the United States who is over the age of twenty-one years, who has resided in this state one year next preceding the election at which he will be entitled to vote, and during the last sixty days of the time shall have resided in the city, and during the last ten days of that time in the precinct of the ward at which he will be entitled to vote, who has not been convicted of a felony or of a misdemeanor connected with the exercise of the right of suffrage, who is not an idiot or an insane person and who is not kept in any poorhouse or confined in any public prison shall be entitled to register and vote in the election precinct where his name is registered, and whereof he is registered as a resident." (Emphasis supplied.)

Section 116.030, RSMo 1959, provides in part:

> "Any qualified elector who registers as herein provided shall be entitled to vote in the election precinct where his or her name is registered and in which he or she is registered as a resident. * * *" (Emphasis supplied.)

Said Section 116.030 also provides for the county clerk to supervise the registration of voters and further provides:

> "No person shall be entitled to register within a period of twenty-eight days prior to any election in which the registration records provided for in this chapter are used. The county clerk shall not cancel or reinstate any registration within five days prior to any such election, except at the direction or order of the circuit court. * * *"

Section 116.070, RSMo 1959, provides in part:

> "Any person who, after registration, lawfully changes his or her surname, shall be entitled to reregister under the changed name, and the county clerk shall cancel the previous registration. Any registered voter who changes his address within the city may, at any time prior to the close of registration for any election, transfer his registration by sending to the county clerk a signed application for transfer or by appearing in person at the office of the county clerk and making application for transfer. * * *"

Section 116.070 further provides:

> "Any duly registered voter who has complied with the provisions of this chapter and who shall change his address within the city during the closed period for registration may for the purpose of the election immediately following such closed period vote in the precinct in which he is properly registered, even though he may have moved from that address during the closed period, if in all other respects he is a properly qualified voter of such city."

Article VIII, Section 2, Constitution of Missouri, 1945, provides in part:

> "All citizens of the United States, including occupants of soldiers' and sailors' homes, over the age of twenty-one who have resided in this state one year, and in the county, city or town sixty days next preceding the election at which they offer to vote, are entitled to vote at all elections by the people. * * *"

Honorable Harold L. Volkmer

Article VIII, Section 5, Constitution of Missouri, 1945, provides:

> "Registration of voters may be provided for by law."

The general rules governing the construction of registration laws is stated in 29 C.J.S., Elections, Sec. 37, Page 60, as follows:

> "The primary purpose of registration laws is to prevent the perpetration of fraud at elections by providing in advance thereof an authentic list of the qualified electors; and every part of a registration act must be so construed as to effectuate this purpose, and to give electors the fullest opportunity to vote that is consistent with reasonable precautions against fraud. Likewise, all provisions of such laws should, if possible, be construed so as to avoid conflict."

In 29 C.J.S., Elections, Sec. 13, page 33, it is stated:

> "In some jurisdictions the constitution makes provision for the registration of voters, and legislation must be consistent with the constitutional regulations.
>
> * * * * * *
>
> "Registration laws, as such, usually are not regarded as adding a new qualification to those prescribed by the constitution, or as abridging the constitutional right of suffrage, but rather as reasonable and convenient regulations of the mode of exercising the right of suffrage, although, as is observed in subdivision b(2) of this section, a registration law is void which attempts to prescribe qualifications additional to those fixed by the constitution. * * *"

In State ex rel Meyer vs. Woodbury, Supreme Court, 10 S. W. 2d 524, the court held that a statute requiring a voter to be registered before being eligible to vote was not a conflict with the constitutional provision defining voters' qualifications, and that such statute did not impose an unreasonable requirement upon the voter.

In State ex rel Hay vs. Flynn, St. Louis Court of Appeals, 147 S. W. 2d 210, the voter appeared before the election board less than fifteen days before the election and wanted to register. There was no contention that the voter was not a qualified elector in all respects if she had presented herself for registration in due time. The court held that she was not entitled to register to vote for the particular election. The court stated, l. c. 211:

> "Relator's position is that the provisions of Section 15 supra, which require that registration shall be closed fifteen days preceding a general election, and forty days prior to a municipal election, are mandatory, while respondent contends the provisions are merely directory. There is no absolute test by which the question here presented may be resolved, but in passing upon the matter, the prime object is to ascertain the legislative intent from a consideration of the statute as a whole, bearing in mind its object and the consequences that would result from construing it one way or the other. State ex rel. Ellis v. Brown, 326 Mo. 627, 33 S. W. 2d 104. The primary purpose of registration laws is to prevent fraudulent abuse of the franchise, by providing in advance of elections an authentic list of the qualified voters."

In 65 C.J.S., Names, Sec. 3, page 4, it is stated:

> "At marriage the wife takes the husband's surname which becomes her legal name. Her maiden surname is absolutely lost, and she ceases to be known thereby."

These general principles must be applied in construing the statutory provisions involved herein, and all the statutory provisions must be harmonized, if possible.

In considering the first question submitted, Section 116.070, supra, provides that any person who lawfully changes his or her surname after registration shall be entitled to register under the changed name. This statute is not mandatory but merely states that such person shall be entitled to re-register.

Section 116.030, supra, provides that any qualified elector who registers as provided herein shall be entitled to vote in the precinct where his or her name is registered. We believe that a person must be registered in his or her lawful name before being entitled to vote. As heretofore stated, the primary purpose of the registration of voters is to prevent the attempt of fraudulent use of the voting franchise by determining in advance those persons qualified to vote. The identification of voters is by name.

Section 116.130, RSMo 1959, requires the voter to identify himself and sign his name before receiving a ballot. It further provides the judges of the election shall permit no person to vote unless properly identified as a resident of the precinct and registered as such. Said section further provides: "Whereupon the name of the person being found in the registration records of the precinct in which he offers to vote, the vote of such person shall be received and counted as other votes." (Emphasis supplied)

Under Section 116.050, RSMo 1959, dealing with the duties of the county clerk in administering this law, the county clerk is authorized to use any practical method, such as the checking of mailing lists or other available records, which may assist him in checking, verifying, and keeping up to date the records of registration. This procedure would be ineffective if the elector was not required to be registered under his correct name. Since a woman when she marries loses her maiden name and acquires the surname of her husband as her lawful name, such person would not be registered under her lawful name if she did not reregister after her marriage.

It is our opinion that a woman who is registered as a voter in her maiden name and thereafter marries has to reregister under her married name before she is entitled to vote at subsequent elections where registration is required.

In your second question you want to know whether a person who changes his or her name during the closed period for registration is entitled to vote using his or her former surname or new surname.

There are a number of court decisions in this state construing voter registration laws. They all deal with failure to register or to transfer registration in compliance with the statutes. They all involve situations where the voter could comply with the registration laws

but merely failed to do so. Such decisions are of very little value in determining the question submitted herein.

Article VIII, Section 2, of the Constitution determines the qualifications of voters. Although Article VIII, Section 5, provides that laws may be enacted providing for registration of voters, such laws cannot conflict with the other constitutional provision regarding the qualifications of voters.

Under the facts submitted herein, where the voter's name is changed during the closed period for registration, there is no statutory provision providing for a remedy for such change of conditions. Such person cannot be charged with neglect or failure to act to change or correct his registration in order for the person to comply with the registration laws. Certainly there is a considerable difference in a situation where the voter has a remedy under the statute and fails to comply with it and a situation where the voter has no statutory remedy.

The voter registration laws must be harmonized if possible and cannot be in conflict with constitutional provisions regarding the qualification of voters (29 C.J.S., Elections, page 60, supra).

A voter cannot be denied the right to vote because he is not correctly registered when there is no statutory procedure for him to be correctly registered. To deny him the right to vote under such conditions would be in violation of his constitutional right to vote. Likewise, we do not believe the Legislature intended for the registration laws to deny such person the right to vote.

Section 116.070, supra, provides that any person who after registration lawfully changes his or her surname shall be entitled to <u>reregister</u> under the changed name. This gives the person the absolute right to be reregistered under the changed name and to have the previous registration canceled by the county clerk. The statute by using the word "reregister" we believe distinguishes the registration from an initial registration. Section 116.030, supra, provides that no person shall be entitled to register within twenty-eight days prior to an election in which the registration records are to be used. We believe this applies only to a voter who has not been previously registered and does not prohibit a registered voter from reregistering under the changed name. It is our opinion that a registered voter who changes his or her surname has the right to reregister under his or her changed name at any time.

Honorable Harold L. Volkmer

In your third question you inquire by what process and at what time may the person in charge of registration books remove registration cards.

Section 116.030, RSMo 1959, provides in part that the county clerk shall not cancel or reinstate any registration within five days prior to any such election except at the direction or order of the circuit court.

Section 116.110, RSMo 1959, provides in part that:

> "Cancellation of registration shall be made by the county clerk whenever it is brought to his attention that a registered voter be dead, disfranchised or removed from the city, in which case the county clerk shall stamp the word 'canceled' across the face of all three signatures of the registered voter, and he shall note thereunder the reason for cancellation; * * *".

Said section further provides that before any voter's name is canceled for any reason other than a change of name or transfer of residence the county clerk shall send a notice of cancellation to the last known address of such voter and also notify the chairman of the two major political parties and a notation thereof shall be made on the master registration.

Section 116.090, RSMo 1959, provides for the registration lists to be checked each four years by the county clerk and the names of the persons found to be improperly registered or disqualified shall be published in a newspaper, and if the voter does not appear at the office of the county clerk within thirty days of such publication his name shall be stricken from the list.

Under Section 116.010, RSMo 1959, the registration of any voter may be changed, canceled or transferred only as provided by statute.

Under these statutory provisions cancellation of a voter's registration cannot be made within five days prior to an election unless by a circuit court order and cancellation must be made as provided in Section 116.110 by stamping the word "canceled" across the face of all three signatures of the voter after he is properly notified.

Honorable Harold L. Volkmer

CONCLUSION

It is our opinion that:

1. A voter duly registered as a voter in a city of ten thousand or more in a county of class two, three or four, and who thereafter changes his or her name must reregister in order to vote at subsequent elections where voter registration is required.

2. A voter duly registered as a voter who changes his or her surname during the closed period for registration must reregister before he or she is entitled to vote and such person may reregister at any time.

3. The county clerk shall not cancel or reinstate any registration within five days prior to an election except by order of a circuit court. Cancellation of registration is to be made by writing or stamping the word "canceled" over the signatures of the voter on each of the three signature cards.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Moody Mansur.

Yours very truly,

THOMAS F. EAGLETON
Attorney General

MM:BJ