

ELECTIONS:
SUFFRAGE:
VOTER REGISTRATION:
PRIMARY ELECTIONS:
GENERAL ELECTIONS:

The 29th day prior to any general or primary election day is last day for valid registration for such election; persons registering after 29th day and before election day may not vote in election but are properly registered for next election. County Clerk should withhold registration cards of late registrants until day after July 27, 1962 election immediately following 28-day period and then place in proper binders.

Honorable Arthur B. Cohn
Prosecuting Attorney
Pulaski County
Waynesville, Missouri



Dear Mr. Cohn:

This will acknowledge receipt of your letter of July 20, 1962, requesting an opinion of this office. Your request reads as follows:

"Under Section 114.120 Missouri Revised Statutes of 1959, it states that 'No person is entitled to register within a period of twenty-eight (28) days prior to any primary or general election in which the registration records provided for in this chapter are to be used'.

"Under this Section, what would be the last day for registration for the primary election to be held August 7, 1962?"

You have also asked would the registrants registering subsequent to July 9, 1962, be properly registered to vote in the November election, and you have further inquired as to the proper procedure for handling the registrations of the registrants after July 9, 1962.

The statute which you have reference to, Section 114.120, RSMo 1959, reads as follows:

"No person is entitled to register within a period of twenty-eight days prior to any primary or general election in which the registration records provided for in this chapter are to be used. The county clerk shall not cancel or reinstate any registration within five days prior to any primary

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or general election, except at the direction of the circuit court. If on election day it comes to the attention of the county clerk that, through inadvertence, a registration card has been placed in the wrong precinct binder, the county clerk shall correct the error on the blue registration record and shall send the record to the proper voting precinct."

The general rule for computation of time is contained both in Supreme Court Rule 31.01 and Section 506.060, RSMo 1959. The pertinent portion of Section 506.060 reads as follows:

"1. In computing any period of time prescribed or allowed by this code, by order of court, or by any applicable statute, the day of the act, event or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Sunday or a legal holiday, in which event the period runs until the end of the next day which is neither a Sunday nor a legal holiday. When the period of time prescribed or allowed is less than seven days, intermediate Sundays and legal holidays shall be excluded in the computation. A half holiday shall be considered as other days and not as a legal holiday."

While the above quoted statute and Supreme Court Rule 31.01 pertain to court procedure, yet we think the principle of the statute is applicable to the election law statute Section 114.120. In the question before us the designated period of time occurs before the specified date and not afterwards as is set out in the above quoted portion of Section 506.060. However, the same general rule will apply and an application of it to our set of facts leads us to the determination that July 9, 1962, is the last date upon which a person may register as a qualified voter for the primary election to be held August 7, 1962.

In a case analogous to the one before us, *State ex rel Cassidy vs. Zaller et al*, Ohio, 50 N.E. 2d 991, the Supreme Court of Ohio was ruling upon Section 4785.92, General Code

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of Ohio (since repealed), which provided that objections to nominating petitions could be made during a certain specified period of time. The statute there under consideration, while not identical to our statute, is similar in purpose and reasoning, and it is felt that the decision arrived at in construing this statute is applicable to our case. The statute there under consideration read as follows:

"Such petition papers shall be preserved and open, under proper regulations, to public inspection for at least five days prior to the fifty-fifth day preceding the election, during which time objections may be filed thereto, and be heard by the secretary of the state or board, as the case may be."

The Ohio Supreme Court, in ruling adversely to an objection which had been filed on the fifty-fifth day before the election, stated at page 992:

"* * * It is well settled that when a statute requires an act to be done within a specified number of days prior to a fixed date, the last day, namely, the fixed date, is to be excluded and the first day included in making the calculation * * *"

After stating the election date was November 2, the court continued as follows:

"Relators' protests were filed on September 8, 1943, or on the fifty-fifth day before the election. Therefore, the filings were too late as the period of five days or more in which protests containing objections could have been filed must precede the fifty-fifth day prior to the election day. In any event, September 7th was the last day on which such protests could have been filed."

So it is also in our case. When we exclude the named date, August 7, and deduct twenty-eight days, as provided in Section 114.120, RSMo 1959, we find that the first day of the period to be included in the prohibition is July 10. Therefore, the last day that a valid proper registration for the August 7 primary could be made would be the day prior to July 10, or July 9, 1962.

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We do not intend to and do not hold that registration by a person on July 10, 1962, or even later is void or invalid for all purposes. Section 114.120, supra, states in part:

"* * * any primary or general election in which the registration records provided for in this chapter are to be used. * * *"
(underscoring added)

It would seem, therefore, that while a registration subsequent to July 9, 1962, would not be effective to confer voting privileges for the August 7, 1962, primary it would be effective and qualify as a proper registration for the next succeeding general election to be held in November, 1962.

You have also asked what is the proper procedure if persons are allowed to register during the twenty-eight day period preceding any primary or general election. It is suggested that a satisfactory procedure would be to withhold the registration sheets or cards until after the primary or general election immediately following this twenty-eight day period and at that time insert them in the proper registration books. It is felt by this office that the above would be a proper and legal method of handling this problem.

CONCLUSION

Therefore, it is the opinion of this office that:

1. The twenty-ninth day prior to the date of the election is the last date upon which a valid registration may be made, which in this case is July 9, 1962, for the primary election of August 7, 1962.

2. A registration subsequent to July 9, 1962, while not effective to confer voting privileges for the August 7 primary would be effective and qualify as a proper registration for the next succeeding general election to be held in November of 1962.

3. A satisfactory procedure to assure that persons registered subsequent to July 9, 1962 (during the twenty-eight day period prior to August 7, 1962), are not allowed to vote in the August 7, 1962, primary would be for the county clerk to withhold the registration cards or sheets until after the primary election on August 7, 1962, and at that time insert them in the proper registration books.

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The foregoing opinion, which I hereby approve, was prepared by my assistant, Robert R. Northcutt.

Yours very truly,

THOMAS F. EAGLETON
Attorney General

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