

BALLOTS:  
ELECTIONS:  
VOTERS:

Ballots marked in the proper square with a cross or X mark or a check or V mark are valid.

October 4, 1963

OPINION NO. 63

Honorable William J. Esely  
Prosecuting Attorney  
Harrison County  
Bethany, Missouri



Dear Sir:

This is in answer to your opinion request which reads, in part, as follows:

"One other question involved the manner of marking a ballot, that is as to whether or not it had to be in the form of an 'X' or could be a check mark or some other mark. I have found at least one case which seems to indicate that it does not necessarily have to be an 'X' but can be a check mark as long as the lines of the two marks intersect, at an angle."

The problem presented appears to be - what kind of mark must the voter make in the appropriate square or circle to be considered a valid mark? It will be noted that Section 111.580, RSMo 1959, repeatedly refers to "cross (X) mark." The statute then defines a cross or X mark in the following language:

" \* \* \* A cross (X) mark is any line crossing any other line at any angle within the voting space, and no ballot shall be declared void because a cross (X) mark therein is irregular in form."

In the case of Riefle v. Kamp, 247 SW2d 333, 337, the St. Louis Court of Appeals pointed to the objects to be kept

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in mind in determining the validity of the markings on a ballot:

"In settling these questions three objects must be kept in mind: 1, The intention of the voter. 2. The secrecy of the ballot; and 3, The requirements of the statute. If the voter's intention can be gathered from his ballot, without laying down a rule which may lead to a destruction of its secrecy, and the voter has substantially complied with the statute, his intention should be given effect. If a mark shows the voter's intent but at the same time serves the purpose of indicating who voted it, or if the voter has failed to substantially comply with the directions of the statute in making the voting mark, the ballot should be rejected."

The Court also pointed out the policy of our statutes in the following language, l.c. 339:

"Our statute sets a liberal pattern for the courts and the courts have adopted a policy of liberal interpretation in favor of the voter in all questions. The statute does not provide that a ballot should be rejected when not marked exactly as directed, but tends to favor the voter in an imperfect compliance. The provisions as to marking a ballot tend to limit the citizen in his exercise of the right of suffrage and should be liberally construed in his favor. When the statute does not expressly declare that a particular informality voids a ballot, it would appear the better policy to consider the statutory requirement as directory only. The whole purpose of the ballot as an institution is to obtain a correct expression of intention; and if, in a given case the intention is clear, it is an entire misconception of the purpose of the requirements to treat them as essentials; that is

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as objects themselves, and not merely as means. If the voter has made an honest effort to express himself in the manner provided by statute his vote should be counted."

The Court then considers whether or not a so-called V or check mark complies with the statutes and concludes that it does, in the following language, 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."

#### CONCLUSION

Ballots marked in the appropriate square by the voter with one of the various types of crosses or X marks or a check or V mark should be considered valid if the voter's intention can be gathered from his ballot and the marking is not such as to serve the purpose of indicating who voted the ballot.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, J. Gordon Siddens.

Yours very truly,

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THOMAS F. EAGLETON  
Attorney General

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