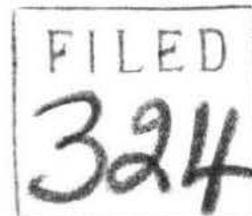


ELECTION COMMISSIONERS: The Board of Election Commissioners  
BOARDS: has the responsibility to determine  
ELECTORS: the qualification of voters. Where  
NAMES: an elector changes his name, he is  
ELECTIONS: entitled to reregister under such  
name if the change of name was bona fide and not fraudulent  
in its purpose. Where an issue of good faith arises in a  
change of name, the Board, after hearing all the evidence,  
should determine if such change of name is bona fide. If the  
parties act in good faith with full disclosure of the facts,  
there would be no violation of Section 129.680, RSMo 1959.

December 30, 1965

OPINION NO. 324



Mr. Fred A. Murdock  
Board of Election Commissioners  
for Kansas City, Jackson County, Missouri  
1331 Locust Street  
Kansas City, Missouri

Dear Mr. Murdock:

This opinion is submitted in response to your inquiry by  
letter wherein you posed four questions which are as follows:

1. May the Kansas City Election Board refuse to register an applicant if the applicant does not furnish proof of identity satisfactory to the Board?
2. May the Board refuse to register an applicant in a name given by the applicant if the applicant fails to produce evidence satisfactory to the Board that the name given is the applicant's true name?
3. Under the facts hypothesized above, may the Board refuse to change the registration of Samuel Brown to show his name as Samuel Brown Ali and, in particular, would such refusal constitute a violation of Section 129.680, RSMo 1959?
4. Under the facts hypothesized above, is Samuel Brown's attempt to register under the name of Samuel Brown Ali a violation of Section 129.680, RSMo 1959?

Mr. Fred A. Murdock

You submitted certain hypothetical facts to be considered as follows:

"'Samuel Brown' is a qualified voter and is registered in that name. He now presents himself with the request that his registration be changed to show his name as 'Samuel Brown Ali'. He claims that 'Ali' is his true surname; however, every document he can produce in proof of his identity gives his name as Samuel Brown. He admits that he was named Samuel Brown at birth and has been so known most of his life. He further admits that he never has undertaken to effect a formal change of name from Samuel Brown to Samuel Brown Ali by an appropriate legal proceeding or action. He contends that 'Ali' was the true name of his family in the country of their origin but fell into disuse following the settlement of his ancestors in the United States. He further states that he only recently became aware of these facts. The Board assumes that Samuel Brown Ali is not the name of another person."

It is also noted that our opinion is limited to the interpretation of the law under Chapter 117 VAMS as applied to the limited area of Kansas City, that is in Jackson County. Accordingly this opinion does not purport to interpret Chapters 114 or 119 VAMS as applied to those parts of Kansas City which are located in either Platte or Clay County.

The constitutional and statutory provisions in pertinent parts are as follows:

"All citizens of the United States, \* \* \* 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, (and no other person, shall be entitled to vote at all elections by the people) \* \* \*." Article VIII, Section 2, Constitution of Missouri, 1945.

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

Mr. Fred A. Murdock

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

Section 117.040 VAMS reads as follows in pertinent parts:

"Every citizen of the United States \* \* \* shall be entitled to vote at such election for all officers, \* \* \* but shall not vote elsewhere than in the precinct where his name is registered, and whereof he is registered as a resident."

(Underscoring Supplied)

Section 117.050, subparagraph 6, reads in pertinent parts:

"Said board of election commissioners shall make all necessary rules and regulations, not inconsistent with this chapter, with reference to the registration of voters and the conduct of elections and shall have charge of and make provisions for all elections, general, special, local, municipal, state, county, all primaries, and of all other of every description, to be held in such city or any part thereof, at any time."

(Underscoring Supplied)

Section 117.300, provides in pertinent parts:

"The method of conducting registration shall be regulated by the board by the same rules, regulations, and instructions, subject, however, to the following provisions:

"(1) Only such persons as shall be duly qualified to vote within the city at the next succeeding election and who shall personally apply for registration shall be registered \* \* \*.

"(2) Every person who applies for registration, \* \* \* shall make out, sign and present to the registration officer an application for registration on an application blank substantially as follows: \* \* \*(Requires the name and other information be furnished).

"(7) After the affidavit of registration has

Mr. Fred A. Murdock

has been prepared, the voter shall be required to take oath to the affidavit of registration, \* \* \*. No person shall be registered as a voter unless he take the required oath and subscribe to the original and duplicate affidavits by signing his name in the proper space \* \* \*."

Section 117.310, subparagraph 2, reads in pertinent parts:

"Upon the receipt of an application for transfer or reinstatement the signature on the application shall be compared with the signature on the registration record: \* \* \*"

Section 117.560, reads in pertinent parts:

"Any qualified elector, on the day of election, in any precinct, shall be entitled to receive from the judges of election a ballot to be voted at said election, after such elector is identified as in this section provided. After such identification, it shall be the duty of such judges to deliver such ballot to the elector. Such elector shall identify himself to such judges and sign his name and address either in whole or by mark upon a voter's identification certificate furnished him by the clerk \* \* \*."

The general rules governing the construction of registration laws is stated in 29 C.J.S., Elections, Section 37, Page 106, 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. 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."

Mr. Fred A. Murdock

In 29 C.J.S. Elections, Section 13, Page 57, it is stated that 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.  
\* \* \*"

In State ex rel Meyer vs. Woodbury, Missouri Supreme Court, 10 S.W. 2d 524, the court held that a statute requiring a vote 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. Flinn, 147 S.W. 2d 210 the Court held that the principle of registration law is to prevent the fraudulent abuse of the franchise by providing in advance of election an authentic list of qualified voters.

The summation of general principles (which is set out above) should be borne in mind in considering the four questions which you posed.

In response to the first question, it is basic that every qualified person must be afforded the right to vote (State ex rel Ellis vs. Brown 33 S.W. 2d 104, 107). The sole objective of the statutes (Chapter 117 with which we are concerned) is to determine those who possess the qualifications of an elector as defined by statute and to make a public record thereof (State ex rel Ellis vs. Brown, supra). It should be clear, having in mind the statutes set forth above, that qualified voters are identified by name. To accomplish its delegated powers, the Board (under Section 117.050 VAMS supra) may prescribe rules and regulations for registration not inconsistent with the Constitution of Missouri and the referenced Chapter. Normally, registration is accomplished, by the execution of the "affidavit of registration" by the elector but it is not necessarily limited to this alone. The Board under Section 117.050 VAMS may impose additional requirements to supplement the statutory

Mr. Fred A. Murdock

registration procedures. The duty of passing on the qualifications of the voters and the legality of their votes rest with the election officials. \* \* \* (Nichols vs. Reorganized School District No. 1 of Laclede County, 364 S.W. 2d 9, 13; State ex rel Meyer vs. Woodbury et al 10 S.W. 2d 524, 526). Where the election officials are given this responsibility of determining the qualifications of the voters, the Board should have the authority to accomplish those designated purposes. This office concludes, therefore, that if registrars are not satisfied that the applicant is a qualified elector, they may require further proof of the elector's qualifications. If satisfactory proof of qualifications of an elector is not presented, the Board may refuse to register or reregister the elector. (State ex rel Meyer vs. Woodbury, supra).

Thus, considering the situation submitted in your request for an opinion, the Board should consider the contentions of the elector as well as all other pertinent facts such as the electors drivers license, social security card, draft registration, etc., which still show his name, as registered, to be Samuel Brown. Upon consideration of all the facts, the Board should determine, in the exercise of its discretion, whether there had been a bona fide change of name under the principles which we discuss next.

Your second question must be answered in the affirmative. It should appear from the answer given to your first question, the Board does have the duty to determine the electors "true name" for registration purposes. The term "true name" (as used here) is hereafter defined.

The Supreme Court in St. vs. Crowe, 382 S.W. 2d 38, 42, had this to say about 'names':

"[1] The word 'name' as used in the statutes providing for the publishing and printing of a candidate's name should be taken in its plain ordinary and usual sense as provided in § 1.090 RSMo 1959, VAMS and as said in the case of State ex rel. Lane v. Corneli, 347 Mo. 932, 149 S.W. 2d 815, 1.c. 821.

"The common law recognized only one Christian name or given name and one family surname,

Mr. Fred A. Mrudock

State v. Hands, Mo., 260 S.W. 2d 14; Nolan v. Taylor, 131 Mo. 224, 32 S.W. 1144; Carlton v. Phelan, 100 Fla. 1164, 131 So. 117; Feldman v. Silva, 54 R.I. 202, 171 A. 922; 65 C.J.S. Names § 3, p. 2.

"It has been held that the middle name or initial of an individual is unimportant and forms no part of the Christian name. State v. Hands, supra; Miller v. Medley, 236 Mo. 694, 139 S.W. 158. However, in modern times recognition is frequently given to one or more middle given names or initials. In the case of State ex rel. Lane v. Corneli, supra, the Supreme Court in defining the meaning of the word 'name' said (149 S.W. 2d at l.c. 821)'  
\* \* \* A person's name is the designation ordinarily used, and by which he or she is known in the community. Names are used as a method of identification. Whether the identification is sufficient is ordinarily a question of fact.' This definition was given by the court in connection with the use of the word 'name' as contained in the statutes relating to the assessment of personal property.

"[2] In State ex rel. Kansas City Public Service Company v. Cowan, 356 Mo. 674, 203 S.W. 2d 407, l.c. 408, the Supreme Court said: ' \* \* \* After all, a name is only what one calls himself for purposes of identification. \* \* \*' A person's name, therefore, is the designation by which he is commonly known and one which he knows himself and others call him. State v. Deppe, Mo., 286 S.W. 2d 776, 781; Ohlmann v. Clarkson Sawmill Co., 222 Mo. 62, 120 S.W. 1155, 28 L.R.A., N.S., 432; Nolan v. Taylor, supra.

Under certain circumstances, one may lawfully change his name without resort to any legal proceedings and the name thus assumed will constitute his legal name just as much as if he had borne it from birth. This principle is aptly stated in 65 C.J.S. "Names"§11 page 19 as follows:

Mr. Fred A. Murdock

"In the absence of statutory restriction, one may lawfully change his name without resort to any legal proceedings as long as it does not interfere with the rights of others and where it is not done for a fraudulent purpose. The name thus assumed will constitute his legal name for all purposes just as much as though he had borne it from birth or as though it had been provided for by a court order, even though the name taken is the name of another living person. A person who has changed his name without resort to legal proceedings may subsequently assume the name given him at birth. The common-law right of a person to change his name is limited in some jurisdictions, however, by statutes which require a person transacting business under a fictitious name which does not show the name of the person interested to file and publish a prescribed statutory certificate."

This general statement of the law as announced in C.J.S. was approved by the Supreme Court, en banc, in *State ex rel Kansas City Public Service Company vs. Cowan*, 203 S.W. 2d 407.

Thus, if the Board should find that the "true name" of Samuel Brown has been in fact, changed to Samuel Brown Ali based on the evidence submitted, the Board should permit Samuel Brown to reregister and thereby become eligible to vote under the name of Samuel Brown Ali (if otherwise qualified). If on the other hand the evidence submitted to the Board is not persuasive of a bona fide change of name of the applicant, then the Board should deny the application on the grounds that the evidence does not support the proposal submitted. It is for the Board to pass on the sufficiency of the evidence.

We believe the procedure for change of names found in Section 527.270 RSMo to be permissive only and not a compulsory prerequisite to use of another name. Section 527.270 supra reads as follows:

"Hereafter every person desiring to change his or her name may present a petition to that effect, verified by affidavit, to the circuit court in the county of the petitioner's residence, which petition shall

Mr. Fred A. Murdock

set forth the petitioner's full name, the new name desired, and a concise statement of the reason for such desired change; and it shall be the duty of the judge of such court to order such change to be made, and spread upon the records of the court, in proper form, if such judge is satisfied that the desired change would be proper and not detrimental to the interests of any other person."

Since identification of an elector is by name, an elector should be allowed to vote only in the name in which he is registered. Thus, if the elector is registered as Samuel Brown, he should be permitted to vote only as Samuel Brown (if otherwise qualified). When duly reregistered as Samuel Brown Ali, he should be permitted to vote only under the name of Samuel Brown Ali (if otherwise qualified).

The third question requires two separate considerations. It is assumed your interest indicated in the third question involves Section 129.680 VAMS and is confined to that portion of that statute which imposes sanctions for those election officials who by "other unlawful means, prevent, hinder or delay any person having a legal right to register or to be registered, from duly exercising such right; \* \* \* shall be judged guilty of a felony, etc."

The gravamen of the offense under Section 129.680 simply stated, is the unlawful interference with the right of an elector to exercise his franchise to vote. Our answer is limited to the facts contained in your inquiry. Assuming the Board acted reasonably; in good faith without any fraudulent purpose and upon a fair consideration of all the evidence, the conclusion that no violation occurred appears justified.

Your fourth question is answered in the negative under the facts. Samuel Brown's adoption of the name of Samuel Brown Ali apparently was not fraudulent and was not done with any illegal purpose according to your statement of facts but rather with a full disclosure of all facts and under a claim of right. Having in mind the discussion set forth above, this office concludes that Samuel Brown's attempt to register under the name of Samuel Brown Ali is not a violation of Section 129.680 VAMS (State vs. White 140 S.W. 896; State vs. Dunwoody 132 S.W. 227, 228).

Mr. Fred A. Murdock

The conclusions herein are limited to the facts stated in your request for an opinion.

CONCLUSION

It is the opinion of this office that:

1. The Kansas City Election Board has the duty to determine the qualifications of electors. If after consideration of all pertinent facts, the Board, in its discretion, may refuse to register an elector for cause.
2. The Board, in its discretion, can conclude that an elector has failed to establish proof of a bona fide change of name.
3. An elector may validly change his name (if not done for fraudulent purposes) and when properly reregistered under such adopted name, the elector should be entitled to vote under his adopted name, if otherwise qualified.
4. Where an election board, in good faith and for reasonable cause, rejects an elector's application to register to vote, there is no violation of Section 129.680, RSMo 1959.
5. Where an elector, in good faith and with full disclosure of all the facts, attempts to register to vote, there is no violation of Section 129.680, RSMo 1959.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Mr. Richard C. Ashby.

Yours very truly,

  
NORMAN H. ANDERSON  
Attorney General