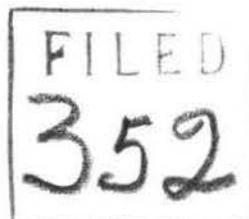


November 23, 1965

Opinion No. 352  
Answered By Letter  
(Mansur)

Honorable Frank C. Mazzuca  
Representative, 1st District  
Jackson County  
1700 Wyoming  
Kansas City, Missouri 64102



Dear Mr. Mazzuca:

In your letter of September 8, 1965, you request an opinion from this office concerning the validity of House Bill No. 386, enacted by the 73rd General Assembly.

Your first question is whether House Bill No. 386, will allow the sale and use of voting machines which lists the names of the candidates for public office in a horizontal manner.

House Bill No. 386, repealed and reenacted certain statutory provisions concerning voting machines including Sections 121.100 and 121.060 RSMo.

Section 121.100, subdivision 4, V.A.M.S. 1959, reads as follows:

"4. The order of the arrangement of parties and candidates shall be as provided by law not in conflict herewith except that the candidates for nomination for any one office at any primary election shall be listed in the order of filing, and the order of the arrangement of the parties on the state and county primary elections shall be as provided by law for general elections."

Honorable Frank C. Mazzuca

This provision of the statute was considered by the Supreme Court of Missouri in *City of St. Louis v. Crow*, 376 S.W. 2d 185 (1964). The Court held that under the above provision of the statute the names of candidates for nomination to various offices should be listed in the order of filing in a single vertical column opposite the name of the office for which they are a candidate. This statute was repealed by House Bill No. 386 and reenacted so that it now reads, subdivision 4:

"The order of the arrangement of parties and candidates shall be as provided by law, not in conflict herewith, except that the candidates for nomination for any one office at any primary election shall be listed in the order of filing, either vertically or horizontally. If the candidates are listed vertically, all names of candidates for the same office shall appear in the same vertical column. If the candidates are listed horizontally, the order of listing shall be from left to right, and if the first horizontal row is filled and two or more rows are needed to list candidates for an office, the remaining candidates shall be listed in the order in which they filed, from left to right, in the second and any additional horizontal row needed to list all candidates for the office, and the order of the arrangement of the parties on the state and county primary elections shall be as provided by law for general elections."

The basic rule of statutory construction is to seek the intention of the lawmakers and, if possible, effectuate that intention; and the court should ascertain legislative intent from the words used, if possible, and should ascribe to the language its plain and rational meaning. *State ex rel Wright v. Carter*, 319 S.W. 2d 596. The legislature is presumed to be aware of interpretations placed upon the existing statute by the state appellate courts, and it is presumed that in amending a statute or enacting a new statute, the legislature's intent is to effect some change in the existing statute. *Wright v. J. A. Tobin*

Honorable Frank C. Mazzuca

Construction Company, 365 S.W. 2d 742; Darrah v. Foster, 355 S.W. 2d 24.

Section 121.100, as amended by House Bill 386, expressly provides that the names of the candidates for office shall be listed in the order of filing, either horizontally or vertically, and expressly the manner in which they are to be so listed. This statutory provision does not appear to be ambiguous and no factual situation has been presented that gives rise to any ambiguity.

In your second question inquiry is made whether the bill will allow the use of an adapter. We are informed the "adapter" inquired about is the device for printing, embossing, or photographing the recording counters which show the total number of votes cast as provided under Section 121.060, subsection 14, as amended by House Bill 386.

House Bill 386 provides in part that any type of voting machine shall be approved which is so constructed as to fulfill certain requirements, including the following:

"(14) It may be provided with a device for printing, embossing or photographing the recording counters before the polls open and after the polls close, making the opening of the counter compartment by the election officials unnecessary. Recording counters are the counters which show the total number of votes cast for any one candidate at any particular time."

This provision of House Bill No. 386, does not appear to be ambiguous and no facts have been submitted to give rise to any ambiguity. There is a legal presumption that a statute is valid; if there is doubt as to the constitutionality of the statute, the doubt should be resolved in favor of the validity of the act; that the expediency or in expediency of the act is not for the courts; that the power of the legislature to enact laws has no limitation except that expressed in the state and federal constitution. State ex inf. Barker v. Merchants' Exchange, 269 Mo. 346.

Very truly yours,

NORMAN H. ANDERSON  
Attorney General