

VOTERS:
REGISTRATION:
ELECTIONS:
LEGISLATION:
RACE, DESCRIPTION OF:

House Bill No. 136, enacted by the Seventy-Fourth General Assembly, signed by the Governor on May 2, 1967, amending Section 117.330, RSMo 1959, to delete the item "White Colored" from the Affidavit of Registration, does not repeal that portion of Section 117.300 which requires the registration officer to note on the Application for Registration whether the applicant is White or Colored without inquiry where such is apparent.

OPINION NO. 348

November 2, 1967

Mr. Fred A. Murdock, Chairman
Board of Election Commissioners
1331 Locust Street
Kansas City, Missouri 64106



Dear Mr. Murdock:

Your request for an opinion reads as follows:

"House Bill No. 136 enacted by the 74th General Assembly and signed into law by the Governor on May 2, 1967, repealed Section 117.330, R.S. Mo., 1959, and enacted a new Section 117.330 in lieu thereof. The new section thus enacted is identical to the section repealed except that it omits all reference to race from the form of the affidavit of registration. It is our understanding that the sponsors of the bill intended to eliminate reference to race from all registration records prepared and maintained by this board; however, Section 117.300, R.S. Mo., 1959, was not amended in any respect, and subsection 3 thereof requires the registration officer to 'note on the application for registration the sex of the applicant, and whether the applicant is white or colored, without inquiry where such is apparent.' You will note that the affidavit of registration and the application for registration are separate and distinct forms."

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"Under these circumstances, we respectfully request your opinion whether the Board is required to continue to note the applicant's color on the application for registration."

As indicated in your request, we have two forms to consider. Each of these forms has been prescribed by the legislature. We quote the portion of Paragraph 2 of Section 117.300, RSMo 1959, wherein the form of application for registration is prescribed:

"(2) Every person who applies for registration, unless unable to write or for other good reasons is unable to do so, shall make out, sign and present to the registration officer an application for registration on an application blank substantially as follows:

Notice: If you are already registered in (name of city) and have changed your residence, do not make out this application for registration. Make out an application for transfer of registration.

APPLICATION FOR REGISTRATION

(Fill in with pen and ink. Do not use pencil)

1. My full name is (First name)....
(Middle Name)....(Last or surname)
2. I reside at(Street or Number)....
(Name of Street)
3. Floor Apartment Room No.
(Fill in the above if they apply)
4. I have resided continuously at the above address since
Month Day Year
(The above may be answered by 'life', if such is the case)
5. I was born in on
(Name of state or county)
Day Month..... Year.....
6. Date of application

I hereby certify that I am a citizen of the United States, that I am not at present registered in (name of city), that on the day of the next succeeding election I shall be at least twenty-one years of age, and a resident of the state of Missouri for at least one year and (name of city)

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for at least sixty days immediately preceding the election, that to the best of my knowledge, I shall be qualified to vote, and that the above statements are true.

.....
Signature of voter

This application must be presented in person to two officers of opposite political faith in charge of registration. It does not complete your registration. It is also necessary for you to take oath and sign the affidavit of registration.

Received by
Signatures of registration officers."

Paragraph 3 of Section 117.300 includes the requirement that:

"* * *The said registration officer shall note on the application for registration the sex of the applicant, and whether the applicant is white or colored, without inquiry where such is apparent. The said registration officer shall also enter any additional notations on the said application where such may be necessary or convenient. * * *"

The form of affidavit of registration as prescribed in Section 117.330, RSMo 1959, is as follows:

| | | | RESIDENCE | | | |
|---|--------------|--------|-----------|-----|---------------------|----------|
| | | | Street | No. | Floor, Apt. or Room | Precinct |
| Last name | First Name | Second | | | | |
| Date of start of residence & present address..... | | | | | | |
| Male | Female..... | | | | | |
| White | Colored..... | | | | | |
| Birthplace..... | | | | | | |
| Date of birth: | | | | | | |
| Day | | | | | | |
| Month..... | | | | | | |
| Year..... | | | | | | |

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"If naturalized: Name of
Court.....
Place..... Date.....

Through whom naturalized:

Husband
Father Name.....

Remarks

AFFIDAVIT OF REGISTRATION

State of Missouri,) ss.
County of _____)

I hereby swear (or affirm) that I am a citizen of the United States, that on the day of the next succeeding election I shall be at least twenty-one years of age, and shall have resided in the state of Missouri one year and in the city sixty days immediately preceding the election, and that I am legally qualified to vote.

Subscribed and sworn to before me this ____ day of _____.

Signature of voter.

Signature of registration officer.

VOTING RECORD

Stamp or write the date of each election at which the voter votes on the first vacant space.

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As stated in your request, the legislature in House Bill No. 136 repealed Section 117.330, and in lieu thereof enacted a new Section 117.330, which deleted the item "White Colored" from the form of affidavit of registration. Your question, therefore, is whether the legislature by repealing that portion of Section 117.330 to delete all reference to race in the form of affidavit of registration, also repealed a portion of Section 117.330 to delete all reference to race in the form of application for registration.

There is no express provision in House Bill No. 136 repealing any portion of Section 117.300. It follows, therefore, that House Bill No. 136 did not repeal any portion of Section 117.300 unless it did so by necessary implication.

Well-established rules of law governing the repeal of statutes by implication are found in State v. Malone, 192 SW 2d 68, 1.c. 70. In that case the court stated:

"[2] Repeal of statutes by implication is not favored. State ex rel. St. Louis Police Relief Ass'n v. Igoe, 340 Mo. 1166, 107 S.W. 2d 929; Graves v. Little Tarkio Drainage Dist. No. 1, 345 Mo. 557, 134 S.W. 2d 70; Coleman v. Kansas City, 348 Mo. 916, 156 S.W. 2d 644; Lajoie v. Central West Casualty Co. of Detroit, 228 Mo. App. 701, 71 S.W. 2d 803.

[3] The repeal of a statute by a subsequent statute is a question of intention, and there is a presumption against the intention to repeal where express terms are not used. State ex rel. St. Louis Police Relief Ass'n v. Igoe, supra.

[4] If by any fair interpretation all the sections of the statutes can stand together, there is no repeal by implication. Hull v. Baumann, 345 Mo. 159, 131 S.W. 2d 721.

[5] An act may be repealed by necessary implication, if a later act is so repugnant to the former that the two cannot stand, even though no mention is made of the former act in the later. Vining v. Probst, Mo. App., 186 S.W.2d 611.

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[6] But though two acts are seemingly repugnant they must, if possible, be so construed that the later will not operate as a repeal, by implication, of an earlier one and if they are not irreconcilably inconsistent, both must stand. Graves v. Little Tarkio Drainage District No. 1, supra."

This case has been cited with approval in Rosebraugh v. State Social Security Commission, 196 S. W. 2d 27, 1.c. 31:

"[7,8] It is well settled that repeal by implication is not favored and if by any fair interpretation the sections of the statute can stand together there is no repeal by implication. It may be further said that the repeal of a statute, or any part thereof, by a subsequent statute is a question of intention on the part of the Legislature and there is a presumption against the intention to repeal where express terms to that effect are not used. State v. Malone, Mo. App., 192 S.W. 2d 68, and cases there cited."

In view of these rules, the real question for consideration is whether there is such repugnancy between the provisions of Section 117.300 which requires the registration officer to note on the application for registration whether the applicant is white or colored, and the provisions of Section 117.330 as amended by House Bill No. 136 which deletes all reference to color from the affidavit of registration, that the two sections cannot be harmonized and effect given to both.

The two statutes are part of the registration law and in that respect deal with the same subject matter. But, it is in different ways and for different purposes. Paragraph 8 of Section 117.300, provides that:

"The application for registration shall be filed alphabetically and shall constitute a permanent master file record of all persons applying for registration under this law.

The first sentence of Section 117.340 states:

"The original affidavits of registration shall be filed by precincts and shall constitute the precinct register of voters."

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Inasmuch as the legislature has specified not only what information the application must contain but also the manner in which the information is to be preserved, it is clear that the application must contain all information required by Section 117.300. Accordingly there is no inconsistency or incompatibility between Section 117.300 which relates to the application and Section 117.330 which relates to the affidavit and both of these statutes can be given force and effect.

CONCLUSION

It is the opinion of this office that House Bill No. 136, Seventy-fourth General Assembly which amended Section 117.330, RSMo 1959, to delete the item "White Colored" from the affidavit of registration, did not by implication repeal that portion of Section 117.300, RSMo 1959, which requires the registration officer to note on the application for registration whether the applicant is white or colored without inquiry where such is apparent.

The foregoing opinion, which I hereby approve, was prepared by my assistant L. J. Gardner.

Very truly yours,


NORMAN H. ANDERSON
Attorney General