

ELECTIONS:
VOTERS:

Section 78.550 only prohibits candidates and other interested persons from hauling voters to the polls.

OPINION NO. 253

September 9, 1969

Honorable William C. Batson, Jr.
Prosecuting Attorney
Butler County
Poplar Bluff, Missouri 63901



Dear Mr. Batson:

This is in response to your request for an opinion dated May 5, 1969, in which you state:

"Under Section 78.550 of the Missouri Revised Statutes, 1959, I would like an opinion construing sub-section one thereof. Questions I particularly have concerning that section are: Is this sub-section directed against hired haulers? Or, is it against anyone voluntarily hauling voters to the polls? Does it prohibit taxis' from hauling voters to the polls? Does it prohibit an individual from hauling himself to the polls to vote in an automobile or vehicle of any kind?"

Section 78.550 §1 provides:

"No person or persons shall use or employ any carriage or automobile or vehicle of any kind for the purpose of hauling voters to the polls on primary or election days."

The question you submitted requires an interpretation of the above statute.

Article 1, section 25 of the Missouri Constitution, 1945 provides:

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"That all elections shall be free and open; and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage."

The primary rule of construction of statutes is to ascertain the lawmaker's intent from the words used, if possible, and to put upon the language of the legislature, honestly and faithfully, its plain and rational meaning and to promote its object and the manifest purpose of the statute, considered historically is properly given consideration. *Willis v. American National Life Insurance*, 287 S.W.2d 98. Generally, courts must seek to gather the intent of the legislature from the ordinary meaning of the word used considering its legislative history, and if necessary, considering also the circumstances and usages of the time, and must seek to promote the purpose and object of the statute and to avoid any strained or abused meaning. *St. Louis Southwestern Railroad v. Loeb*, 318 S.W.2d 246. It is another rule of construction that the intention of a statute will prevail over the literal sense of its terms. State ex rel *Kirks v. Allen*, 255 S.W.2d 144.

The statute under consideration has not been construed by any appellate court in this state. In *Coward v. Williams*, 4 S.W.2d 249, a Texas Court of Civil Appeals in an election contest case had under consideration a statute which provided:

"No vehicle shall be used by any person to convey voters to the polling place unless the voter is physically unable to or enter the polling place without assistance."

The court in construing the above statute stated *loc.cit.* 251:

". . . That law was enacted to prevent vehicles being used by candidates or other interested parties to convey voters to the polls. The custom had reached the stage before the law was passed that, in every town and village, vehicles were sent out in every direction to gather up prospective voters and convey them to the polls. It had become a species of petty bribery, and the law was passed to repress and destroy the practice. It was never contemplated that a man might not permit his friends and neighbors to ride with him to the polls. If the statute is literally con-

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strued, a man could not take his wife, sons, and daughters with him in his automobile to the polls."

In *Edwards v. Roberts*, 233 S.W.2d 592 (Texas 1950) Walter Buck requested his nephew to haul him to the polls in an election as to the annexation of a school district. The court held this was not in violation of the above statute and cited *Coward v. Williams*, supra as authority.

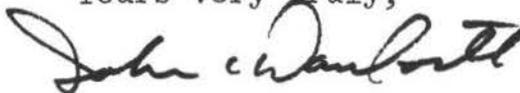
Section 78.550 §1 supra, does not prohibit an individual from using a conveyance to go to the polls. A literal interpretation of this statute would prohibit him from hauling other persons to the polls and it would prohibit any member of his family from using any conveyance to transport other members of his family to the polls. We do not believe the legislature intended any such restriction on the conduct of voters. It is a matter of common knowledge that candidates or other interested parties in the past have hired workers or offered free transportation to haul voters to the polls for the purpose of influencing their vote. We believe this type of conduct is what the legislature intended to prohibit and that it did not intend to prohibit a voter to use his own vehicle to go to the polls, or to prohibit members of a family from using vehicles to go to the polls, or to prevent a person hiring a taxi or other methods of transportation to go to the polls so long as it was not done for the purpose of influencing the manner in which the individual should vote.

CONCLUSION

It is the opinion of this department that Section 78.550 §1 RSMo 1959 prohibits only candidates and other interested parties from hauling voters to the polls with the intent and purpose of influencing their vote.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Moody Mansur.

Yours very truly,



JOHN C. DANFORTH
Attorney General