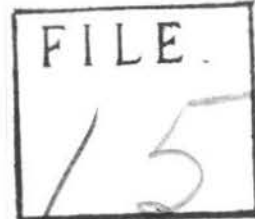


ELECTIONS: Serial number on ballot must be covered by black sticker.

March 26, 1942

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Mr. Ed. S. Carroll, Chairman
Jackson County Board of Election Commissioners
Court House
Independence, Missouri



Dear Sir:

This department is in receipt of your request for an official opinion, which reads as follows:

"The last session of the Legislature repealed Sec. 11607 of Art. 7, Chap. 76, R. S. of Missouri, 1939 and enacted in lieu thereof Sec. 11607, which among other things, requires the Election Judges in the presence of the voter, before any ballot is placed in the ballot box, to cover or conceal securely the identifying number or numbers by means of a black sticker so as to conceal the number or numbers placed thereon.

"Your opinion is desired as to the interpretation of identifying numbers. The ballot carries on the back the number placed by the judges in their own handwriting. This number is to be covered by the black sticker mentioned above, but what about the serial number that is printed on the stub of the ballot and the face of the ballot? In other words, should the black sticker be used on the serial number on the face of the ballot?

"Your opinion is necessary and urgently requested because the Board is in the process of ordering black stickers to be used as required by Law."

The 1941 General Assembly enacted a statute relating to the secrecy of the ballot, which law provides as follows (Laws of Missouri, 1941, page 363):

"Every ballot shall be numbered in numerical order in which received, and it shall be the duty of the election judges, in the presence of the voter, before any ballot is placed in the ballot box, to cover or conceal securely the identifying number or numbers placed on the ballot by placing over the number or numbers, and pasting down, a black sticker, which sticker is to be two inches square with gummed edges extending three-eighths ($3/8$) of an inch towards the center of the square, so as to conceal but not destroy, the number or numbers placed thereon. Such stickers shall be supplied to the election judges by the County Clerk or Board of Election Commissioners of each county or city, and no sticker shall be removed except in case of contested elections, grand jury investigations, or in the trial of all civil or criminal cases in which the violations of any law relating to elections, including primary elections, is under investigation or at issue and then only on the order of a proper court or judge thereof in vacation. No judge of election shall deposit any ballot upon which the names or initials of the judges, as hereinbefore provided for, do not appear."

The physical makeup of the ballot is set forth in Section 11595, R. S. Mo. 1939, and is as follows:

" * * * Provided, that in all cities and counties which now have or may hereafter

have a legal registration, the election commissioner shall cause the ballots to be printed on the same leaf with a stub not over two inches in width, and separated therefrom by a perforated line extending across the top of the ballot one inch from the top thereof. Upon the left-hand margin of the stub of this ballot shall be printed the serial number of the ballot; one-half inch to the right of this serial number shall be left a space enclosed within printed lines not less than one-fourth inch in width nor less than one inch in length in which a judge of election will write the registration number of the voter when the ballot is voted. The same number as appears on the stub shall be printed on the left-hand side of the ballot near the top, and not more than one inch below the perforated line separating the ballot from its stub. The number of each ballot shall be the same as that on the corresponding stub and the ballots and stubs shall be numbered consecutively in each city: * * *

The procedure to be followed by the election judges in marking the ballot is provided for in the same section, and reads as follows:

* * * * In such precincts the election judges, at the time of separating the ballot from its stub, shall write in the space printed on this stub the registration number of the voter to whom the ballot shall be delivered. On receiving the ballot from the voter the number of the ballot voted in the order in which it is received, but no other writing except the initials of two judges as provided for in section 11602 of this chapter, shall be on the back of the ballot. * * *

The primary rule of construction of statutes is to ascertain and give effect to the lawmakers' intent, and this should be done from the words used, if possible, considering the language honestly and faithfully. *St. Louis v. Commission Co.*, 85 S. W. (2d) 21, 337 Mo. 238; *Graves v. Purcell*, 85 S. W. (2d) 543, 337 Mo. 574.

The purpose of what is commonly known as the Australian Ballot System, which is the system in force in Missouri, is given in 20 C. J., p. 140, as follows:

" * * * The distinguishing feature of this ballot system is that every elector shall be permitted to vote for whom he pleases, by depositing a ticket bearing the names of the persons for whom he wishes to vote in a receptacle provided for the purpose, in such a way as to secure to the elector the privilege of complete and inviolable secrecy in regard to the persons for whom he voted."

As our Supreme Court has aptly said in *Bradley v. Cox*, 197 S. W. 88, "The real requisites are that the ballot shall preserve secrecy and show the voter's choice."

Under Section 11595, supra, in counties like Jackson County, which have a legal registration, besides the number written on the ballot by the judges showing the number of the ballot voted in the order in which it is received, there is also a serial number, which serial number has also been printed upon the stub of the ballot. This stub contains a line in which the registration number of the voter is placed. It appears to us that it would be an idle gesture to cover only the number written upon the ballot by the judges and not cover the serial number, because the identification of the voter could be readily ascertained by reference to the ballot stub. Therefore, since it is the intent of the lawmakers to preserve absolutely the secrecy of the ballot, we believe that the serial number upon the ballot should also be covered by a sticker. It will be noted that Laws of Missouri, 1941, page 363, supra, provide that the sticker shall cover or conceal the identifying "number or numbers

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placed on the ballot." The lawmakers obviously intended to take care of such a situation as presented under the election laws insofar as they apply to counties such as Jackson.

CONCLUSION

It is, therefore, the opinion of this department that in those cities and counties in which the ballots are required by law to have a serial number, the black sticker required to be placed over the identifying number or numbers on a ballot (Laws of Missouri, 1941, page 363) shall be placed not only over the written number of the judges but shall be placed also over the serial number on the ballot.

Respectfully submitted

ARTHUR O'KEEFE
Assistant Attorney General

APPROVED:

ROY MCKITTRICK
Attorney General

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