

ELECTIONS: City of Kansas City.  
Who eligible to vote -- Weeks Bill.

11593 - 10557 - 10617 R3 Mo 1929 -

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July 26, 1933.



Hon. W. W. Graves, Jr.,  
Chairman  
Board of Election Commissioners  
Kansas City, Missouri

Dear Sir:

This is to acknowledge your letter of July 21st, 1933,  
which is as follows:

"Owing to the fact that there is not sufficient time to hold a registration, according to law, prior to the coming Special Election which the Governor is to proclaim, Tuesday, July 25, several questions have arisen on which the Board would like to have an opinion from your office.

Section 10593 Revised Statutes of Missouri 1929 provides that a person who has been duly registered as a voter in a precinct in Kansas City may if he changes his residence after such registration and prior to the election next following said registration transfer his registration to the precinct in which he has moved. As we have no registration prior to this election, in your opinion would a voter who has moved his place of residence, since the last registration in September, 1932 be entitled, at this time, to be transferred upon the books to his present address? In this respect we beg to inform you that the opinion of most of the members of the Board is that transfers at this time should be allowed.

Undoubtedly since the last registration there have been a great number of people who have become of age and also a great number of people who have become naturalized who would be entitled to vote if they were upon the registration books. As we have no registration, what is the opinion of your office as to whether or not these people are entitled to vote at this Special Election? We refer you in this respect to Sections 10582 and 10612 Revised Statutes of Missouri 1929. A precedent has been established here in Kansas City, particularly in a certain Special Bond Election, that people who had changed their residences and people who had obtained their majority or become naturalized were permitted at such election to vote in the precinct in which they lived, although not registered, upon the signing of an affidavit by such person or persons, that they were citizens of the United States and that they had resided at such address in said precinct and ward for so many days prior to such election and had been residents of the state of Missouri for more than one year preceeding said election and that they had never been convicted of any felony or any misdemeanor connected with the right of suffrage. Members of the Board have found no sections of the Constitution Statutes, or any case law which would indicate that this would be proper.

Kindly advise us the opinion of your office in this respect.

Thanking you for any courtesy in these matter, we remain "

You state that owing to the fact there is not sufficient time to hold a registration according to law prior to the election to be held by virtue of a proclamation of the Governor, that you would like to have answered questions that have arisen, these being;

First: Whether or not a person who is registered in one precinct and who since the last election moved or changed his address to another precinct may be transferred upon the books to his present address by the board?

Second: Whether or not persons who since the last registration are entitled to vote, having become of age, naturalized or acquired citizenship in the State and/or Kansas City, shall be eligible to vote if their names do not appear on the registration books?

The premise stated in your letter, namely, that a registration can not now be had (owing to insufficient time) according to law, must be borne in mind.

You ask if Section 10593 R. S. 1929, does not permit the Board to make such transfers on the registration books. This section in our opinion does not permit of the results you seek to accomplish. It provides in part as follows:

"Whenever any person who has been duly registered as a voter by the board of registration of the precinct in which he then resides, etc. \* \* \* \*, after the close of registration shall change his residence from one precinct in said city to another, or from one part of such precinct to another part thereof, before the day of the election next following his registration, and shall after making such change at any time on or before the tenth day preceding such election, apply to the board of election commissioners to have his name transferred from the precinct in which he is registered, etc. \* \* \* \*; if said board shall be satisfied that the applicant has changed his residence, as stated, and that he is entitled to have his name transferred and his place of residence changed, they shall first cause his name, where he moved from his former precinct, to be erased from the registry thereof, and transferred to the precinct in which he then resides, etc. \* \* \* \*."

We come to the conclusion it does not apply because we believe the statute contemplates that the revision of registration books shall be only for the election for which the registration was held.

Section 2, Laws of Missouri, 1933, page 234, provides in part the following:

"For the purpose of electing delegates to any convention to vote upon the ratification

of any proposed amendment to the Constitution of the United States, the Governor is hereby authorized by proclamation to call a special election and fix the date of holding thereof, etc. \* \* \* \* \*. In all other respects, such special election in each precinct in this state shall be conducted under the provisions of the election laws of this state, insofar as such laws will apply, etc. \* \* \* \* \*."

Section 10582 R. S. 1929, provides who shall be entitled to vote, and we quote a part of same:

"\* \* \* \* \* shall be entitled to vote at such election, for all officers, state or municipal, made elective by the people, or at other elections held in pursuance of the laws of the state, but shall not vote elsewhere than in the precinct where his name is registered and where he is registered as a resident."

Section 10612 reads as follows:

"The vote of no one shall be received by said judges whose name does not appear upon said register as a qualified voter."

We hold to the conclusion that a person in order to vote should be a registered voter and should vote where registered. However, this is a special election (Section 2) "and that it shall be conducted under the provisions of the election laws of this state insofar as such laws will apply."

You will note that said provision uses the words "shall be conducted". In the case of *The State v. Adams*, Alabama Reports, 2 Stewart, 231 l. c. 242, the court in its opinion discussed the word "conducting", having this to say:

\* "Does this provision, for deciding in the event of a tie, form a part of the 'manner of conducting the election?' If it does, then the relator was duly elected; if it does not, he was not. There is certainly a great distinction between the manner of conducting an election, and the election itself. By 'the manner of conducting the

the election.' I understand the formal part of the election, viz: the mode of voting, the mode of receiving and registering the votes, of computing them, &c. The word 'manner' has never been considered as including substance, but form only, and the word 'conducting', certainly cannot be synonymous with 'effecting'. Now the giving a casting vote is clearly not a part of the 'manner of conducting,' but it is effecting the election. The qualifications of the electors is substance, the manner of determining upon those qualifications is form. Under the provision which we are considering, it devolved upon the managers to determine whether the voters possessed the necessary qualifications to vote; but the law must definitely prescribe these qualifications. \* \* \* \*

Also, in the case of Blake v. Walker, 23 South Carolina Reports, 517 1. c. 525, the court said:

"It is true that the act does provide that the election should be conducted according to the law governing municipal elections in the city of Spartanburg, and it may be true that, according to a strict and literal construction of the word 'conducted,' it would not embrace a declaration of the result; but if there is anything else in the act tending to show that the legislature did not intend to use this word in its limited sense, then it is the duty of the court to give effect to such intention.

Now, it seems to us clear that the legislature intended to apply the same law regulating the municipal election to the election provided for in the local option act, and that this act must be read as if the provisions of the fifth section of the charter of the city of Spartanburg had been incorporated into it. So reading it, we think it manifest that the legislature did not intend to use the word 'conducted' in its strict and limited sense, but intended it also to embrace the declaration of the result. \* \* \* \*

We believe the Legislature in the present act intended that all people qualified to vote shall be permitted to vote, yet restricted so that the election insofar as practicable would follow the procedure and method employed in other elections held under the laws of the State.

It is needless to call to your attention that in a city such as Kansas City there must be some method employed to see that only eligible voters are permitted to vote. If such were not the fact it would be impossible for the judges to determine who the voters were. Therefore, the registration books should be at their command and persons who are on such books should be permitted to vote. However, the question arises that many voters (having no opportunity at this election) who are by the Constitution permitted to vote, by not being registered (having become of age or naturalized, or having changed their place of residence) would be disenfranchised. Inasmuch as the election laws apply only where consistent with such, it is our opinion that the judges in charge of the special election upon becoming satisfied that such persons are eligible to vote should permit them to so vote, and if it is your policy to require an affidavit to be signed by persons wishing to vote, who are not on the registration books, we see no harm in that.

Now, as to your first inquiry, we would suggest a list be certified by the election commissioners to the various precincts of persons who were on the books in other precincts, stating thereon the fact that such persons removed their residences. In this manner the judges of election will have a list of every person who would be entitled to vote the same as if a registration were held.

Trusting the above answers your questions, we are

Yours very truly,

James L. HornBostel  
Assistant Attorney-General.

APPROVED:

ROY McKITTRICK  
Attorney-General.

JLH:EG