

Nine Questions regarding primary and general election laws of Missouri.

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Honorable Alexander Holtzoff
Special Assistant to
the Attorney General
Washington, D. C.



Dear Sir:

Your letter of December 31, 1936, addressed to the Attorney General of the State of Missouri, has been handed to me for reply.

As your questions refer mainly to matters which affect primary and general elections we shall undertake to answer them in numerical order.

I.

Q. Does your State permit absentees to vote by mail at general elections?

A. In 1935, the Legislature of Missouri repealed and re-enacted Section 10182, Laws of Missouri 1935, page 264:

"Any elector as defined in the foregoing section expecting to be absent from the county of his residence on the day of such election may, not more than thirty nor less than five days prior to the date of such election, make application in person, or by mail, to the county clerk or, where existing, to the board of election commissioners, or other officer or officers charged with the duty of furnishing ballots for such election in his voting precinct, for an official ballot

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for said precinct to be voted at such election."

The original absentee ballot law, Laws of Missouri 1933, page 219 et seq. contains the procedure for voting absentee ballot. The Constitution of Missouri only permits absentee ballots to be cast some place within the confines of the State.

II.

- Q. Does your State permit absentees to vote by mail at primary elections?

A. Under Section 10181, Laws of Missouri 1933 page 219, an elector is permitted to vote his absentee ballot at any special, general or primary election at which any presidential preference is indicated or any candidates are chosen or elected, for any congressional, state, district, county, town, city, village, precinct, or judicial offices or at which questions of public policy are submitted.

III.

- Q. If either question I or II is answered in the affirmative, please outline the procedure required to obtain absentee ballots.

A. We are enclosing a condensed instruction to absentee ballot voters which was prepared by this department prior to the general election of November 3, 1936.

IV.

- Q. If your State has an absentee voters' law, does such law apply to Government employees living in the District of Columbia, but maintaining a voting residence in your State?

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A. It is our opinion Government employees who maintain a voting residence in the State of Missouri cannot vote by absentee ballot except within the confines of the State, on election day, owing to the provisions of Article VIII, Section 9, of the Constitution of the State of Missouri, which is as follows:

"Qualified electors absent from the state on military or naval service shall, and qualified electors absent from their counties but within the state may, be enabled by law to vote at general or special elections."

V.

- Q. Does your State require personal registration or enrollment for (a) general elections or (b) primary elections? If so, what opportunities are accorded for such registration? (cite statutes)

The election laws of Missouri are divided so that different articles are applicable to different cities or counties according to their population. Before setting forth the requirements it may be well to list the cities and counties in the State of Missouri to which the following articles apply. Those laws which refer to cities of over 100,000 are applicable to the cities of St. Louis and Kansas City only. The sections that deal with counties of more than 200,000 and less than 400,000, refer only to St. Louis County. Those sections that are enacted for counties of 150,000 refer to Jackson County. Those election laws which deal with cities of the first class refer to St. Joseph only. The other articles apply to the various cities whose population fall within the designated section.

All provisions for registration provide that such registration must be made in person. The time and opportunities so accorded vary with the different cities and counties. In cities of over 100,000, that is St. Louis and Kansas City, under Section 10586, R. S. Mo. 1929, provides that there shall be four days of registration, six weeks prior to the presidential election. Such days should be Monday, Tuesday, Wednesday and

Thursday. Section 10594 R. S. Mo. 1929, provides that invalids and persons who are absent at a distance of more than 15 miles on all of the days appointed for registration, may file his application in the office of the election commissioners to have his name registered in the precinct in which he resides. Such application as stated in the provision must be filed fourteen days preceeding the election. However, in State ex rel Ellis v. Brown, 326 Mo. 627, 33 S. W. 2d 104, it was held that this provision was only directory and that invalids and absentees could be registered at any time, even on the day of election. Under Section 10597 the name may be placed upon the registration books by court order after a hearing which the court decides that such person is rightfully entitled to be placed thereon. It is the usual procedure in Missouri in order to get ones name on the registration book on the day of election to apply to the Circuit Court for such an order. In counties of 200,000 to 400,000, St. Louis County being the only county which falls within this classification, under Section 10, page 234, Laws of Missouri 1935, it provides that on Tuesday five weeks before the next presidential election i. e. 1936 there shall be a general registration, the second day of registration shall be on Wednesday immediately following, and the third day shall be on Saturday thereafter, under Section 29, page 248, Laws of Missouri 1935, any person legally entitled to vote who has not previously been registered in any precenct of such county, or who after an absence from such county of more than two years, returns and reestablishes their residence in said county, or whose registration has been suspended on the registration record on account of failure to vote for any general, county or municipal election, including primary, during the last two years may register at the office of the board of election commissioners, who must meet at least three days of each week for this purpose. This section provides that applications for reinstatement may be made through the mail if done so within 20 days of notice, and provides further that requests for transfer of registration may be made through the mail. No registration of new voters is allowed later than five weeks before an election, nor transfer; and reinstatement later than eight days before. Under Sections 8 and 34, this article does not apply to election of public officers determined otherwise than by ballot, or to township or village elections or municipal elections in cities of 10,000 inhabitants or to public school elections or to elections for county superintendent of schools. Said act onl applies to cities of 10,000 to 100,000 inhabitants.

Counties of over 150,000 or more are provided for in Article 15, Chapter 61, and refers only to Jackson County, exclusive of Kansas City which is provided for under laws applicable to cities of over 100,000. Section 10512 R. S. Mo. 1929 provides that general registration shall be held every year in which a presidential election occurs, said registration being four weeks before such election and upon Tuesday and Saturday and upon the following Tuesday three weeks before the election. It further provides that the board of election commissioners shall constitute a continuing and continuous board of registry with full power to register any qualified voter at the office of said board which shall hold regular and special sessions for the purpose of such intermediate registration. Section 10524 allows intermediate registration at any time when the board of election commissioners deem proper. Section 10523 provides that those absent or ill during the period of registration can three weeks before the general election apply for registration. The right of appeal to the Circuit Court by one who has been wrongfully stricken or wrongfully prevented from registering is given.

In cities of the first class in which St. Joseph is the only city, any one entitled to vote can register in the registration books and there are no provisions providing for renewing this registration. The same procedure is followed in cities of 30,000 to 80,000, Laws of Missouri 1931, page 214 and Laws 1933, page 230, and cities of 10,000 to 30,000, Laws of 1933, page 239. In cities of from 30,000 to 80,000 a person may register any day ten days prior to the election. In cities from 10,000 to 30,000 registration closes at 5 P. M. on Wednesday of the second week preceding the election and no voter should be thereafter registered prior to said election except by order of the Circuit Court, Laws of Missouri 1933, page 245, Section 14.

VI.

- q. If question 5 is answered in the affirmative, please state how frequently such personal registration must be renewed? (cite statutes)
- A. In St. Louis, Kansas City and Jackson County

there is a general registration every four years under Sections 10586 and 50512 R. S. Mo. 1929. All other cities have permanent registration which does not have to be renewed from year to year.

VII.

- Q. What steps, if any, must the voter take to keep his registration and enrolment effective from year to year for (a) general elections, and (b) primary elections? (cite statutes) (If, for example, the payment of a poll tax is required, please state so.)
- A. A person whose residence is in St. Louis, Kansas City or Jackson County and is properly registered at each general registration, does not have to do anything further to keep his registration in effect.

Section 10599 provides that:

"At every election, and at every primary election for state and county officers held in such city after this article becomes effective and between general registrations, the last general registration shall be continued in force and used, * * * *."

However, under Section 10292, a canvass is to be taken prior to the primary in St. Louis and Kansas City and those not found are served with notice to appear and show cause why their names should not be stricken. Therefore, those absent from the city but who maintain their residence there will fall victim of this procedure but they can always be registered under the procedure described in paragraph V. above.

VIII.

- Q. Are there special provisions for the registration or enrolment of absentee

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voters by mail or otherwise for
(a) general elections, and (b)
primary elections? If so, what
are they? (cite statutes)

A. All registration in the State of Missouri
must be in person and there are no provisions for the registration
by mail.

IX.

Q. If your State now has or at any
time has had an absentee voters'
law or a special law for regis-
tration of absentee voters, has
the constitutionality of such laws,
been passed upon by the courts? If
so, please summarize the decision
and give the citation of the case or
cases.

A. Those statutes dealing with absentee voting have
never been questioned as to the constitutionality since such
voting is allowed by Section 9, Article 8 of the Constitution,
which reads as follows:

"qualified electors absent from
the state on military or naval
service shall, and qualified
electors absent from their count-
ies but within the state may, be
enabled by law to vote at general
or special elections."

Respectfully submitted,

HURREY R. HAMMETT, JR.

APPROVED:

J. E. TAYLOR
(Acting) Attorney General