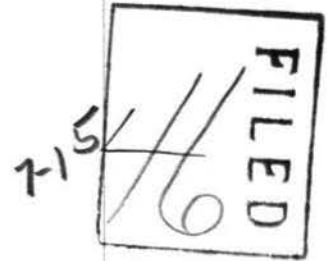


ELECTION JUDGES: Voter must make oath required by Section 10313 before judge is authorized to mark ballot.

July 13, 1940

Honorable Clarence C. Jones  
Probate Judge  
Clinton, Missouri



Dear Judge Jones:

Receipt is acknowledged of your letter of July 10, 1940, asking for an opinion as follows:

"I am requesting your opinion as to Section 10313 of Revised Statutes of 1929 in regard to swearing voters that cannot read and write, or are physical unable.

If I can construe this statute it requires the Judges to swear any voter that is physically unable or cannot read and write before marking their ballot.

I would like to have this statement in plain English with the Attorney-General's signature.

It has been the practice in Clinton, Missouri for Judges to vote them by the hundreds without giving them this oath. If I can read 3882, 3965 and 10313 correctly there is a way to stop this illegal voting.

I am requesting your opinion on Section 10313 and request that you not only send me a copy of this but also send one to the Prosecuting Attorney of Henry County."

July 13, 1940

Section 10313, R. S. Mo. 1929, mentioned in your letter, is an exception to the law protecting the secrecy of the ballot. The method of balloting now in use, among other things, requires that ballots be secretly cast, and this is provided for in Section 10333, which is in part as follows:

"Any voter who shall, except as herein otherwise provided, allow his ballot to be seen by any person with an apparent intention of letting it be known how he is about to vote, or who shall knowingly make a false statement as to his inability to mark his ballot, or any person who shall interfere, or attempt to interfere, with any voter when inside said enclosed space, or when marking his ballot, or who shall endeavor to induce any voter before voting to show how he marks or has marked his ballot, shall be deemed guilty of a misdemeanor and punished accordingly. \* \* \* \*"

The strictness of the provisions of Section 10333 would have the effect of disfranchising those persons who are not able to read or write or, who are physically disabled so that they cannot mark a ballot. In order that these persons would not be deprived of their right to vote Section 10313, mentioned in your letter, has been enacted, it is as follows:

"Any elector who declares under oath to the judges of election having charge of the ballot that he cannot read or write, or that by reason of physical disability he is unable to mark his ballot, may declare his choice of candidates to the judges having charge of the ballots, who, in the presence of the elector, shall prepare

the ballot for voting in the manner hereinbefore provided: Provided, however, that the provisions of this section shall not be construed to allow any judge or judges of any election to enter a booth for the purpose of assisting any elector in preparing his ballot. Such judges, after reading to the elector the contents of the ballot, shall, without leaving their respective positions, prepare such ballot as the elector may dictate."

These two sections, 10333 and 10313, should be read together. They are clearly unambiguous and do not need any construction upon the point which you inquire about. It clearly appears from reading them that all voters are prohibited from letting it be known how they are about to vote, except those persons who are within the exception set out in 10313. The persons coming within the exceptions of 10313 are granted the privilege of revealing their intention as to how they wish to vote to the judges of election, after they have, under oath, stated that they cannot read or write or cannot mark a ballot because of physical disability. The judges of election all have the power to administer oaths and it would be their duty to see that such oath is administered.

#### CONCLUSION.

It is the conclusion of this department that no judge of election can lawfully mark a ballot of any voter, even those who come within the classification of Section 10313, without first requiring such voter to state, under oath, his need for assistance as set out in Section 10313. If a judge should mark a ballot for a voter without administering such oath he would be placing the voter in a position of improperly revealing his intention as to how he was about to vote and, further, neglecting his own

Judge C. C. Jones

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July 13, 1940

duty to administer an oath.

Respectfully submitted,

W. O. JACKSON  
Assistant Attorney-General

APPROVED:

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ROY MCKITTRICK  
Attorney-General

WOJ:CP

cc to Hon. Charles Hasset,  
Clinton, Missouri.