

ELECTIONS:

Hotel keeper convicted of refusal to furnish list of tenants to election commissioner is not considered a crime connected with the exercise of right of suffrage.

Oct. 29, 1938

Mr. Maurice Schechter  
809 Wainwright Bldg.  
St. Louis, Missouri

Dear Sir:

This is to acknowledge receipt of your letter of Oct. 26, 1938, with reference to elections. Your letter reads as follows:

"The Prosecuting Attorney of the City of St. Louis has issued informations against lodginghouse keepers, based on Section 22 of the "Registration Act in cities of 600,000 or more inhabitants", which section is found on page 251 of the Laws of Missouri, 1937. The defendant that I represent is charged with neglecting or failing to comply with the provisions of that section, which is a misdemeanor, punishable by a jail term not exceeding six months, or a fine of not less than \$100.00, nor more than \$1,000.00, or by both such fine and imprisonment.

"Section 12 of the same Act, found on pages 244 and 245, provides that a person cannot vote if (2) he has been convicted of a felony, or of a crime connected with the exercise of the right of suffrage and has not been granted a pardon therefor. Section 29 of the Act, found on page 256, provides that it shall be the duty of the clerk of the court where any person has been convicted of a



misdemeanor connected with the exercise of the right of suffrage, to furnish to the Election Board, the name of the person convicted of said misdemeanor and his place of residence.

"The question in my mind is whether a person convicted of violating Section 22 can be denied the right to vote, because will the failure of furnishing such information to the Board be connected with the exercise of the right of suffrage?

"I have taken this matter up with the Prosecuting Attorney, and we are of the opinion that we should receive a construction by your office on Section 22 as to whether a violation thereof would be "connected with the right of suffrage."

Section 12 of the Session Laws of Mo., 1939<sup>2</sup>, page 245, in describing who should not be entitled to vote reads in part as follows:

"If he has been convicted of a felony, or of a crime connected with the exercise of the right of suffrage and has not been granted a full pardon therefor"

The above quotation is the part that you desire to be construed by this office. Bouvier's Law Dictionary defines "suffrage" as voting; the act of voting. As a general rule the intention of the legislature or of law makers will prevail over the literal sense of the terms in a statute. In the case of State v. Schwartzmann Service, Inc., 40 S. W. (2d) 479, par. 1-3 the court said:

"It is a cardinal rule, universally

accepted, that, in the exposition of a statute, the intention of the law-maker will prevail over the literal sense of the terms; its reason and intention will prevail over the strict letter. When the words are not explicit, the intention is to be collected from its context; from the occasion and the necessity of the law; from the mischief felt, and the remedy in view; and the intention is to be taken or presumed according to what is consonant with reason and good discretion. The object of all rational interpretation is to reach the true intent and meaning of the law-making authority, as expressed in the language it has employed to convey the thought. All other rules are subordinate to that great one. The chief canon of construction is that which requires us to find the legislative intent and purpose. The intent and spirit of the legislative act should be made to speak, if such can be done without doing violence to express language."

Can it be said that the legislature intended that every conviction of each misdemeanor that in the most remote circumstances might interfere with a person voting, should deprive the wrongdoer of voting? Section 22, Session Laws of 1937, p. 251 reads as follows:

"Upon the demand of any election commissioner, the landlord, proprietor, keeper, manager, clerk, or other persons in charge of any lodging house, boarding house, inn, bath house, hotel or tavern in such city, shall, not less than three nor more than five days prior to the first day of registration for every election and also not less than three nor more than five days before every election, file with the election commissioners a written statement,

which shall be open to public inspection, sworn to by him, upon his personal knowledge, setting forth the name of every person residing in his lodging house, boarding house, inn, bath house, hotel or tavern, the period of the continuous residence of such person ending at the date of such statement, the number of the room, bed or cot that such person occupies, and the period for which such persons engaged board or lodging, and such other information as the election commissioners, or any one or more of them may require. Any landlord, proprietor, keeper, manager, clerk or person in charge of any lodging house, boarding house, inn, bath house, hotel or tavern, neglecting or failing to comply with the provisions of this article, shall be deemed guilty of a misdemeanor and upon conviction shall be sentenced to the city or county jail for a term not exceeding six months or be fined not less than \$100 nor more than \$1000 or by both such imprisonment and fine. If any person shall wilfully make a false written statement he shall be deemed guilty of a felony and upon conviction shall be imprisoned in the penitentiary for a term of not less than two years nor more than five years."

This section only states that the wrongdoer in case of refusal to comply with the demand of the election commissioner shall be deemed guilty of a misdemeanor. It does not say that the proprietor shall then be guilty of a misdemeanor connected with the exercise of the right of suffrage. Could it be considered that the crime of the landlord was a violation of this clause? It is possible that the tenants are not even voters and so how could a proprietor violate the law in connection with the exercise of the right of suffrage?

The Supreme Court of the state of Mo. in construing statutes in reference to voters are very liberal and in the case of Chomeau v. Roth, 72 S. W. (2d) page 997, par. 5, the court said:

"If, as the evidence shows, upon matriculation at the seminary the students abandoned their former residences, entering the school with the fixed intention of not returning to their original homes permanently, are they to be disfranchised from thenceforth until they acquire a residence after graduation? We think not. Rather, the policy of the law is to construe election laws liberally in aid of the right of suffrage. \* \* \*

The United States Supreme Court in construing the interpretation of the phrase "exercising the right of suffrage" in the case of United States v. Souders (U.S.) 27 Fed. Cas. 1267, 1269 said:

"It would seem there ought not to be any difficulty in arriving at the significance of the words in the act of Congress providing that "if, at any election for representative," etc., "any person shall, by force, threat, menace, intimidation, or otherwise, unlawfully prevent any qualified voter from freely exercising the right of suffrage," etc. When a man is spoken of as "exercising a right," it is commonly understood that he is doing something. When a voter casts his ballot into the box, do we not say that he is "exercising the right of suffrage"? Can any words be used that better define the act of voting? And, when he exercises this right "freely," does he not do it according to his pleasure, without any constraint either upon his mind or his body?

His will must not be controlled, and his physical opportunity for doing the act must not be interfered with. Any control over the one or interference with the other encroaches upon his freedom of action, and produces the mischief which the words of the statute were designed to guard against and cure. And what is it to prevent a voter from exercising this right? It is to put such a restraint upon his volition, or his body, that he cannot perform the act; producing by threats or otherwise such apprehension of personal loss or injury as to induce him not to vote or to vote contrary to his wishes, being a restraint upon his will, and an intervening between him and the ballot box, so as to render it physically impossible for him to cast his vote, being the restraint upon his body. *United States v. Souders* (W.S.) 27 Fed. Cas. 1267, 1269."

In view of the above construction, could it be said that the proprietor was doing anything connected with the exercising of the right of suffrage, especially in the case where no legal or illegal voters were in his hotel, rooming house, inn etc? The legislature surely only intended that the wrongdoer should do some overt act in connection with voting on election day and not in isolated crimes that are too remote to be connected with the exercise of the right of suffrage.

#### CONCLUSION

In view of the above authorities, it is the opinion of this department that the operators of a lodging house, who have refused to comply with the provisions of Section 22, page 251 of the Laws of Mo., 1937 has not committed a misdemeanor

Mr. Maurice Schechter

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connected with the exercise of the right of suffrage.

Respectfully submitted,

W. J. BURKE  
Assistant Attorney General

APPROVED:

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J. W. BUFFINGTON  
(Acting) Attorney General

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