

ELECTIONS: Several questions on registration of voters in St. Louis.

February 17, 1938.

2-21

Howard

Board of Election Commissioners
For the City of St. Louis,
208 South Twelfth Boulevard,
St. Louis, Missouri.



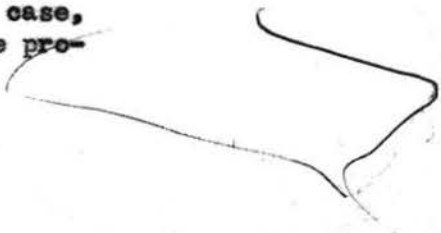
Gentlemen:

This will acknowledge receipt of your letter of the 8th instant, which reads as follows:

"The Board of Election Commissioners respectfully requests an opinion from you regarding the case of a registered voter who has moved to a new address in the same voting precinct and who offers to vote without having been transferred, under the provisions of Section 18 of the Registration Act of 1937 (Laws of 1937, Page 235).

"Your office rendered an opinion regarding this matter under the former Registration Act, on October 1, 1928, and again on January 15, 1931. The Board desires a ruling under the provisions of the Act of 1937.

"The pertinent provisions of the Act seem to be Sections 12, 17 and 24, also Section 10178 of the Revised Statutes of Missouri, 1929. There are two situations to be considered, one in which the voter has moved too late to transfer his registration under Section 18, the other, in which he has had ample time to transfer his registration but has not done so. In the latter case, it would seem to make a difference whether the registration still remains standing on the precinct register or has been canceled by the Board. In that case, the voter would have had notice under the provisions of Section 25.



"The Board desires also to be advised regarding the right of appeal to the Circuit Court provided under Section 27 of the Act of 1937. Under the corresponding section of the former law, Section 10597 R.S. Missouri, 1929, voters who had moved to a new address outside the precinct from which they were registered claimed and exercised the right to appeal to the Circuit Court from adverse decisions of the Board, even on the day preceding an election, and sometimes the Board was ordered by the Circuit Court to register a voter after the time provided for registration under the law had expired.

"The new section differs from the old one in one important respect, which seems to be intended as a limitation of this right of appeal. The old section provided for an appeal 'in all cases where any person is denied registration.' The new section adds the words 'who makes application to register within the time fixed by this Act,' which would exclude last minute appeals, except in cases wherein the Board had canceled a registration within the week preceding an election. The voter is allowed three days in which to appeal from an adverse decision of the Board (Section 27).

"The Board will appreciate your ruling with reference to these problems arising under the Act of 1937."

As we read your letter, you make two inquiries, and we shall answer them in order. The first question is: "Is a registered voter who has moved to a new address in the same voting precinct, but who has not had his registration transferred, entitled to vote?" The answer to this question necessitates an interpretation of the Act governing registration and elections in your city, same being found at pages 237 et seq. Laws of 1937.

In interpreting election laws, as was said in *Nance v. Kearbey*, 251 Mo. 1.c. 382:

"It is right well in setting out to remind ourselves of some fundamentals, viz: While the right to vote is not a vested, natural right in a strict sense, yet it is a constitutional right in those citizens possessed of enumerated constitutional qualifications. (Constitution, art. 8, sec. 2.) It may be regulated by statute but not lightly denied or abrogated. (*Gass v. Evans*, 244 Mo. 1.c. 350; *Bowers v. Smith*, 111 Mo. 1.c. 55.).# * *"

Again in the same opinion, 1.c. 383, the court said:

"Election laws must be liberally construed in aid of the right of suffrage.* * *"

Turning to the provisions of the law to see who is entitled to vote, we find the following: (Section 10178).

"Every male citizen of the United States and every male person of foreign birth who may have declared his intention to become a citizen of the United States according to law, not less than one year nor more than five years before he offers to vote, who is over the age of twenty-one years, possessing the following qualifications, shall be entitled to vote at all elections by the people: First, he shall have resided in the state one year immediately preceding the election at which he offers to vote; second, he shall have resided in the county, city or town where he shall offer to vote at least sixty days immediately preceding the election; and each voter shall vote only in the township in which he resides, or if in a town or city, then in the election district therein in which he resides: * * *."

Section 12, page 244, 245, Laws of 1937:

"Every citizen of the United States, including occupants of soldiers' and sailors' homes, who is over the age of twenty-one years, who has resided in the State one year immediately preceding the election at which he offers to vote, and during the last sixty days of that time shall have resided in the city where such election is held, shall be entitled to vote at all elections by the people, if properly registered, unless he comes within the following exceptions: * * *"

Section 13, page 245, Laws of 1937:

"The vote of no one shall be received by said judges whose name does not appear upon said registers as a qualified voter in the precinct where such person offers to vote."

Therefore, the voter you inquire about would be entitled to vote if his name appears upon the registers "as a qualified voter in the precinct" where he offers to vote.

The question then is "When is a voter properly registered?" Turning to Section 2 of the Registration Act, we find a registered voter defined as follows:

"'Registered Voter', except where otherwise clearly stated, shall mean the person whose name appears on the registration records as a qualified voter."

It would seem, therefore, that the voter you inquire about in the foregoing question is, at the time he offers to vote, a registered voter, and his name does appear upon the registers as a qualified voter in the precinct where he offers to vote.

You mention in your inquiry Section 18 of the Act, which relates to the transfer of registration, said Section 18 reading in part as follows:

"Any registered voter who changes his address within the city may at any time until five days preceding any election transfer his registration by sending to the Board a signed application for transfer or by appearing in person at any office of the Board and making application for transfer.* * *"

It will be seen that Section 18 provides that a voter who has changed his address may apply for transfer of his registration to his new address, but nothing is said as to the effect of his failure to make such application. The law does not say he shall be deprived of his vote unless he avails himself of this privilege of transfer. We think that in considering this section we should follow the rule announced in *Nance v. Kearbey*, supra, l.c. 383, which is in the following language:

"The uppermost question in applying statutory regulation to determine the legality of votes cast and counted is whether or not the statute itself makes a specified irregularity fatal. If so, courts enforce it to the letter. If not, courts will not be astute to make it fatal by judicial construction.* * * Again (pp.61-2): 'If the law itself declares a specified irregularity to be fatal, the courts will follow that command irrespective of their views of the importance of the requirement. (*Ledbetter v. Hall* (1876), 62 Mo. 422). In the absence of such declaration, the judiciary endeavor as best they may to discern whether the deviation from the prescribed forms of law had or had not so vital an influence on the proceedings as probably prevented a free and full expression of the popular will.* * *'"

The same rule was followed in the case of *State ex rel. v. Brown*, 33 S.W. (2d) 104, wherein the Supreme Court in discussing the failure of a voter to comply with certain directions of the law said:

"* * *The statute does not prescribe the consequences of the failure of an applicant either to file his application not later than the fourteenth day preceding the election or to appear before the election commissioners on Monday, Tuesday, or Wednesday of the first week prior to the election; it does not declare that a failure of an applicant in either of the two respects mentioned shall preclude his right to be registered. Now every person having the qualifications prescribed by the Constitution has the right to vote, and the sole objective of the statute is to determine the individuals who possess those qualifications and make a public record thereof.* * *"

If the voter changes his address very long before election the matter will probably come to the attention of the Board, so that the proceedings provided for in Sections 24 and 25 of the Act will be called into play. It will be observed, however, that even by these latter two sections the penalty for failure of the voter to heed the notices of the Board to apply for transfer of his registration is cancellation of his registration.

If the Board calls upon a voter to apply for transfer of his registration and the voter ignores the notices and requests of the Board, his registration will be cancelled, and, therefore, when on election day he offers to vote, his name will not be found upon the registers as a qualified voter in the precinct where he offers to vote. He could, therefore, not vote because not properly registered in that precinct; but if such cancellation of his registration has not taken place, he would be registered as a qualified voter in the precinct where he offers to vote, and hence he would be entitled to vote under Sections 12 and 13 of the Act, as well as under Section 10178 R. S. Mo. 1929.

The Legislature has given the Board authority to compel voters to transfer their registration by giving such Board authority to cancel their registration if they refuse to apply for transfer after certain notices and requests have been given them, and thus the Board has power

to keep registration lists up to date. However, the Legislature has not said that if registrations are not transferred when voters change their addresses, such voters shall lose their votes. It may be the Legislature provided the method set out in Section 18 for the voter to voluntarily apply for transfer of his registration, in order that he might have his registration transferred in a more simple manner than by waiting for the action of the Board under Sections 24 and 25. At any rate, the Legislature has not said that failure to make such voluntary application for transfer will deprive the voter of his right to vote. On the contrary, the Legislature has said that if on election day the voter is registered as a qualified voter in the precinct at which he offers to vote, he is entitled to vote.

CONCLUSION.

It is, therefore, the opinion of this office that a registered voter in the City of St. Louis, who has moved to a new address within the precinct where he is registered, but whose registration has not been transferred, is entitled to vote in such precinct.

II.

Your second question, as we interpret your letter, is, "Does a person who has been denied registration by the Board have the right of appeal unless his application for registration was made within the time fixed by the Act within which voters may apply to be registered?"

It is axiomatic that there is no right of appeal at common law, and that the right of appeal is purely statutory, as was said in *Turr v. Terminal Railroad*, 277 Mo. 1.c. 238:

"Since appeals are matters which are wholly governed by statute, it follows that where there is no statute allowing an appeal, no appeal will lie."

Section 27 gives the right of appeal to a person who has applied for registration within the time fixed by the Act, and who has been denied registration. To that class of applicants the statute has given the right of appeal, but it has not given the right of appeal to any applicants other than those who make application to register within the time fixed by the Act.

CONCLUSION.

It is, therefore, the opinion of this office that a person in the City of St. Louis who applies for registration after the time fixed by the Registration Act, page 237, Laws of 1937, and is denied registration by the Board of Election Commissioners, does not have the right of appeal to the circuit court. We do not mean to hold that such a voter might not, under certain circumstances, have other remedy, but we merely say he would not have the right of appeal.

Respectfully submitted,

HARRY H. KAY
Assistant Attorney-General

APPROVED:

J. E. TAYLOR
(Acting) Attorney-General.

HHK/LMD