

LIQUOR: Qualified voters as used in the Liquor  
ELECTIONS: Control Act means registered voters in  
MUNICIPALITIES: cities where registration is required.

December 19, 1950

Honorable Carl F. Sapp  
Prosecuting Attorney  
Boone County  
Columbia, Missouri



Dear Mr. Sapp:

This is in reply to your request for an opinion which is as follows:

"I have been reading the opinion you sent to me, which was prepared on the 4th day of October, concerning the sale of liquor by the drink in municipalities of over 20,000 inhabitants. The opinion that municipalities of over 20,000 may have an election over having liquor by the drink, and may vote it out upon a proper vote.

"The question is arising, and it is a question in my mind, as to what is a proper vote. Section 4935, R.S. Missouri, 1939, provides that the petitions must be signed by 1/5 of the qualified voters. Section 4890, R.S. Missouri, 1939 provides that in municipalities under 20,000 inhabitants, a vote of the majority of the qualified voters is required. Does the phrase qualified voters, as used in the liquor statutes, mean registered voters? Does it mean those persons who are under no legal disability and who are old enough to vote whether they are registered or unregistered? Or does it mean a majority of the persons voting? I will appreciate an opinion on this question from your office. The liquor by the drink people and the no liquor by the drink people are finding this to be a debatable question."

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Section 4935, R.S. Mo. 1939, is as follows:

"Upon application by petition signed by one-fifth (1/5) of the qualified voters of any incorporated city, who are qualified to vote for members of the legislature in such incorporated city of this state, the board of aldermen, city council or other proper officials of such incorporated city shall order an election to be held in such incorporated city, at the usual voting precincts for holding any general election for state officers, to take place within forty (40) days after the receipt of such petition, to determine whether or not intoxicating liquor, as defined in this act, other than malt liquor containing not to exceed five (5%) per cent of alcohol by weight, shall be sold, furnished or given away within the corporate limits of such incorporated city; such election shall be conducted, the returns thereof made and the results thereof ascertained and determined in accordance in all respects with the laws of this state governing general elections for city officers, and the result thereof shall be entered upon the records of such board of aldermen, city council or other proper officials, and the expense of such election shall be paid out of the city treasury, as in the case of an election for city officers: Provided, that at an election held under the provisions of this section, no one shall be entitled to vote who is not a resident of such incorporated city, or who is not a qualified voter of such incorporated city: Provided, that no such election held under the provisions of this section shall take place on any general election day, or within sixty (60) days of any general election held under the Constitution and laws of this state, so that such elections as are held under this section shall be special elections and

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and shall be separate and distinct from any other election whatever; Provided further, that the board of aldermen, city council or other proper officials shall determine the sufficiency of the petition presented by the poll books of the last previous city election."

The important question which you desire to have answered is whether or not "qualified voters" means those registered or not.

By law the voters in the City of Columbia are required to register. In the early case of State ex rel. Woodson vs. Brassfield, 67 Mo. 331, the Supreme Court of Missouri had occasion to ascertain the meaning of the term "qualified voters" when there was provision for registration. In that case the Court at l.c. 336 stated:

"While the registration law was in force, they only were qualified voters whose names were placed on the registration books. This was the final, qualifying act, and no matter if a citizen possessed every other qualification, if not registered, he was not a qualified voter. It was not the right to register which constituted one a qualified voter, but the fact of being registered as such, was also essential. A qualified voter is one who by law, at an election, is entitled to vote. If, by the law, a person was not entitled to vote, whether in consequence of a disability which deprived him of the right to register, or of his neglect to register with a perfect right to do so, he was equally disqualified.  
\* \* \* ."

Therefore, as we view Section 4935, supra, we deem it to mean that the petition must be signed by one-fifth (1/5) of the qualified voters who are registered.

#### CONCLUSION.

Therefore, it is the opinion of this department that the phrase "qualified voters" as contained in Section 4935,

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R.S. Mo. 1939 (Liquor Control Act) means qualified voters  
who are registered where registration is required.

Respectfully submitted,

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APPROVED:

  
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