

MUNICIPAL CORPORATIONS: Under Article VIII, Section 5, Constitution
CONSTITUTIONAL LAW: of Missouri, registration of voters can only
ELECTIONS: be provided for by state statutes, and not
city ordinances.

February 5, 1951

2/8/51



Honorable Wm. E. Hilsman
State Senator
Third District
Capitol Building
Jefferson City, Missouri

Dear Sir:

Your letter at hand requesting an opinion of this department, which, in part, reads:

"First: The Constitution of Missouri (1945), Article VIII, Section 5, provides that 'Registration of voters may be provided by law.' Chapter 76, Article 18, Section 11888 to 11935, contain the provisions pertaining to registration and election in counties of more than 200,000 and less than 400,000 inhabitants (St. Louis County permanent registration act). Section 11917 of this Act provides that the provisions thereof shall apply to municipal elections in Cities and Towns within such County having a population of over 10,000 inhabitants. That section concludes with the provision that 'all provisions regulating municipal elections in such cities or towns - - - relating to municipal elections shall remain in full force and effect as far as they are not amended and modified by the provisions of this Article'.

"It has come to my attention that several of the towns and cities in St. Louis County, Missouri, which have populations of less than 10,000 inhabitants are attempting to establish laws governing registrations and elections in said Towns under and by virtue of ordinances passed and adopted by their respective Boards of

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Aldermen or City Councils. I wish to be advised as to whether such an ordinance passed and approved by a Board of Aldermen or City Council, is valid, that is I would like to know whether municipalities have the power and authority to write their own election laws or registration laws where none is provided by State law."

In this inquiry you ask if municipalities have the power and authority, by enacting ordinances, to provide for registration of voters in connection with elections when there is no statute providing for such registration.

Article VIII, Section 5 of the Constitution of Missouri, pertaining to the registration of voters, provides as follows:

"Registration of voters may be provided for by law." (Emphasis ours.)

In construing the above constitutional provision insofar as it relates to the question we must determine whether or not the term "provided for by law" has reference to state statutes only or also refers to city ordinances which may be enacted.

In the case of Lawson v. Kanawha County Court, 92 S.E. 786, 80 W. Va. 612, the Supreme Court of West Virginia, in considering a similar term appearing in its Constitution, said the following at S.E. l.c. 789:

" * * * The phrases, 'prescribed by law' and 'provided by law,' when used in Constitutions, generally mean prescribed or provided by statutes. * * *"

In the case of Board of Education v. Town of Greenburgh, 13 N.E. (2d) 768, 277 N.Y. 193, the New York Court of Appeals said at N.E. l.c. 770:

" * * * A 'law' is a rule of civil conduct prescribed by the lawmaking power of the state. 1 Kent Comm. 447. Expressions such as 'required by law,' 'regulated by law,' 'allowed by law,' 'made by law,' 'limited by law,' 'as prescribed by law,' 'created by law,' and 'a law of the state,' as used in the statutes, refer exclusively to the

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statute law of the state (Brinckerhoff v. Bostwick, 99 N.Y. 185, 190, 1 N.E. 663), unless, by the purposes of the statute where the words are used, a broader signification is required. * *"

In the case of United States Fidelity & Guaranty Co. v. Guenther (C.C.A. Ohio), 31 F. (2d) 919, the court was considering the liability of an insurance company arising out of an accident occurring when the insured's employee who was over sixteen but less than eighteen years of age was driving his automobile. The insurance policy contained a provision that it would not cover any liability while the insured's automobile was being operated by any person under the age limit fixed by law or under the age of sixteen years. In the city where the accident occurred there was an ordinance prohibiting a person letting a minor under the age of eighteen years operate his automobile. There was no state-wide legislation fixing a driver's age limit. In construing the particular provision of the insurance policy the court, at l.c. 920, said:

" * * * 'The expression "by law" is at least susceptible of two constructions. It may mean or be fully satisfied by limiting it to a law enacted by the Legislature of a state. Ordinarily, when one speaks of the "law," this is what is meant. One thus speaking has in mind a rule of conduct of uniform and general application prescribed by the supreme law-making body of some sovereignty. Ordinarily, when one speaks of a law, one does not have in mind ordinances, by-laws, or regulations of a municipality. * * *'"

In the Missouri case of State ex rel. McKittrick v. Missouri Public Service Commission, 352 Mo. 29, 175 S.W. (2d) 857, l.c. 861, the court, in construing the term "prescribed by law," said:

" * * * The italicized phrase, 'prescribed by law,' by the weight of authority means, prescribed by statute law. * * *"

In Asel v. Order of United Commercial Travelers of America, 355 Mo. 658, 197 S.W. (2d) 639, the Supreme Court, en Banc, was determining the effect of a provision in an insurance contract

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providing for a limitation for bringing actions against the insurance company, said provision formerly having been upheld by the courts of Ohio. The defendant insurance company was contending that under our Missouri statute a cause of action "barred by the laws" of a foreign state where it originated shall be a complete defense in Missouri. At S.W. l.c. 643 the court, in ruling on the question, said:

"But we do not agree with appellant that our Sec. 1021 imports and makes effective in this state the contractual six months limitation of action clause appearing in the benefit certificate. That statute does, it is true, provide that if a cause of action is 'barred by the laws' of the foreign state where it originated, then that bar shall be a complete defense in Missouri. But the word 'laws' as used in the section refers to the statute law of the foreign state, and not to some contract limitation which the courts of that state may have upheld. And there is no proof that there is any six months statutory limitation on such actions in Ohio. * * * And the word 'laws,' or the phrase 'by law,' when used in contextual connections similar to that appearing here, have usually been held to refer to constitutional or statutory law, especially when there is no common law on the point. * * *"

We have also examined the Constitutional Debates wherein there was much discussion in connection with the drafting of the above-quoted constitutional provision. However, generally that discussion related to the power to be exercised by the General Assembly in providing for registration of voters, and nowhere does it appear that the framers contemplated that such registration could at any time be provided for by city ordinance.

In view of the foregoing authorities we believe that the proper construction of Article VIII, Section 5 of the Missouri Constitution, supra, is that registration of voters can only be provided for by legislative enactment, and in the absence of any statute or legislative enactment a municipality is not authorized to pass an ordinance providing for registration in connection with its city elections.

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CONCLUSION

It is therefore the opinion of this department that municipalities are not authorized to enact ordinances providing for the registration of voters in connection with city elections where there is no state statute providing for such registration, and that under Article VIII, Section 5 of the Constitution of Missouri, registration of voters can only be provided for by legislative enactment.

Respectfully submitted,

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APPROVED:

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J. E. TAYLOR
Attorney General

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