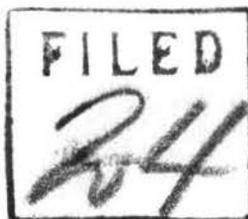


ELECTIONS: Closing of voter registration in City of St. Louis pursuant to Sec. 118.240 RSMo 1949 does not prevent execution of absentee ballot subsequent to such closing date. Canvassers of absentee ballots measure qualifications of such voters by registration law applicable to City of St. Louis, Chap. 118 RSMo 1949, saving an exception to those voting an official war ballot.



October 31, 1956

Honorable Michael J. Doherty
Chairman, Board of Election Commissioners
208 South 12th Boulevard (2)
St. Louis, Missouri

Dear Mr. Doherty:

This opinion is rendered in reply to your inquiry reading as follows:

"The Board of Election Commissioners directed me to write you concerning absentee voting. Under Section 112.020 of the Revised Statutes of Missouri, 1949, in substance, provides that an application for an absentee ballot may be made within 30 days before an election. In the City of St. Louis the statutes provide that the registration shall close on the 24th day before an election, which is October 13, 1956, and on the 19th and 20th of October a canvass is made of all the precincts by the regular precinct clerks, and, of course, after the canvass is made on October 24, 25, 26 and 27, a revision then takes place. Many of the names which appear on the voting lists are stricken off on account of some having left the city and some having moved to other places and not having transferred according to law.

"However, assuming that an absentee voter has moved prior to the canvass and is stricken off, and has already received an absentee ballot and casts his ballot by mailing it in to the Board and, of course, on the envelope containing the ballot is an affidavit to be signed by the voter in the presence of a Notary Public, and should the date of the Notary Public's attestation be

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after the 19th or 20th of October and the voter's name has been stricken from the rolls and not been reinstated during the revision, would the Election Board be obliged to count said vote or should it be rejected?"

Section 118.020 RSMo 1949 provides:

"In all cities of this state now having, or which hereafter have, six hundred thousand inhabitants, or more, according to the last decennial census of the United States, there shall be a registration of all qualified voters, and the registration of voters and the conduct of elections held in such cities shall be governed by the provisions of this chapter and the provisions of the general election laws of this state, so far as the same are not inconsistent or in conflict herewith."

Section 118.240 RSMo 1949, provides, in part:

"* * * Registration for any election shall be closed at five o'clock p.m. on the twenty-fourth day preceding the election except municipal elections, when it shall be closed at five o'clock p.m. on the forty-fifth day prior to April election, and no voter shall thereafter be registered prior to said election, except by order of the circuit court on appeal as provided in section 118.410. No voter who is duly registered in compliance with the provision of this chapter shall be required to register again so long as he continues to reside at the address from which he is registered, unless his registration be canceled, as provided in this chapter."

Qualifications of voters are set forth in Section 118.030 RSMo 1949, which provides:

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"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:

- (1) If he is an idiot or insane person;
 - (2) 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;
 - (3) If he is confined to any public prison;
 - (4) If he is kept at any poorhouse at public expense;
 - (5) If he has been convicted a second time of a felony, or of a crime connected with the exercise of the right of suffrage."
- (Emphasis supplied)

A reading of Section 118.030 RSMo 1949, supra, leads to the conclusion that proper registration is a prerequisite to casting a ballot. In State ex rel. May, et al. v. Flynn, 147 S.W. (2d) 210, 235 Mo. App. 1003, 1.c. 1006, the St. Louis Court of Appeals referred to the primary purpose of this registration law in the following language:

"The primary purpose of registration laws is to prevent fraudulent abuse of the franchise, by providing in advance of elections an authentic list of the qualified voters."

The canvass referred to in the first paragraph of your letter of inquiry is authorized by Section 118.330 RSMo 1949, reading as follows:

"Immediately after the close of registration before each election preceding which a canvass is required, the board shall have verification lists prepared for each precinct.

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Such list shall have the names and addresses of all voters registered in the precinct arranged in the same order as the precinct registers. A canvass shall be made before each general state and county election, each state and county primary and primary city elections."

We now turn to Missouri's absentee voting law found at Chapter 112 RSMo 1949. In connection with your opinion request we need not review Sections 112.300 to 112.410 of the absentee voting law since such statutes deal with the voting of an absentee war ballot, and qualified electors who vote such ballots are relieved of compliance with registration laws in the following language found in Section 112.310 RSMo 1949:

"Any elector authorized to vote under the provisions of sections 112.300 to 112.410 may vote an official war ballot without complying with the provisions of the registration laws of the precinct of his residence."

Section 112.060 RSMo 1949 provides for the opening and canvassing of absentee ballots by persons appointed by the county clerk or the board of election commissioners, and reads in part, as follows:

"* * * The persons so appointed shall take the oath prescribed for the regular judges of election and shall at once proceed to open, canvass and count such votes and, having determined that such absent voter or voters are entitled to vote in the respective precincts wherein he or they offer to vote and having been fully satisfied thereof, they shall certify to the county clerk or the election commissioners, as the case may be, the number of qualified votes to be counted for each of the respective candidates voted for in such election precinct, or for or against the question of public policy submitted at such election, and shall forthwith make such certificate to the county clerk, or to the election commissioners, as the case may be, who shall tabulate such vote along with the other votes certified from the several

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precincts of the county and credit the same to the candidate or issue for whom or for which the absentee votes were cast in arriving at the total result of the election in the district, precinct or ward where the voter resides or lives. No ballot shall be counted by the judges which has not been received and filed by the issuing official or officials within the time required by law. * * *

(Emphasis supplied)

The quoted portion of Section 112.060 RSMo 1949 casts a duty upon the canvassers of the absentee ballots to pass upon the qualifications of those casting absentee ballots before certifying results of such canvass to the board of election commissioners. In passing upon the qualifications of such absentee voters the canvassers are duty bound to measure the qualification of the absentee voter by the standards set forth in Chapter 118 RSMo 1949, the registration law particularly applicable to the City of St. Louis. Having heretofore concluded that proper registration is a prerequisite to a valid ballot, it necessarily follows that if an elector seeking to cast an absentee ballot has had his name stricken from the registration rolls in the course of preparation of verification lists of registered voters authorized by Section 118.330 RSMo 1949, his only recourse to maintain his registration rights is by appeal to the circuit court as authorized in Section 118.240 RSMo 1949. Upon failure to sustain registration by such procedure the absentee ballot of the voter should be rejected by the duly appointed persons canvassing such ballots.

Section 112.050 RSMo 1949 provides that the absentee ballot may be delivered to the issuing official not later than six o'clock p.m. of the day next succeeding the day of such election. No prohibition is found in the absentee voting law, Chapter 112 RSMo 1949, or in the registration law applicable to the City of St. Louis, Chapter 118 RSMo 1949, against executing an absentee ballot after the closing date of registration, and a notary public's attestation to such absentee ballot bearing such a date will not invalidate the ballot unless dated subsequent to the day of election.

CONCLUSION

It is the opinion of this office that closing of voter registration in the City of St. Louis pursuant to directives

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contained in Section 118.240 RSMo 1949 will not prevent the execution of an absentee ballot subsequent to such closing date of registration, but the canvassers of such absentee ballots are required to measure the qualifications of such voters by the registration law applicable to the City of St. Louis and found in Chapter 118 RSMo 1949, saving an exception to those voting an official war ballot.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Julian L. O'Malley.

Yours very truly,

John M. Dalton
Attorney General

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