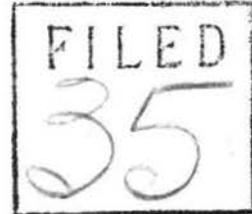


ELECTIONS: Section 10313, R.S. 1929, construed. The words "declare under oath" do not require the elector to sign an oath. He may take it orally

March 19, 1938

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Honorable Waller W. Graves, Jr.
Prosecuting Attorney
Kansas City, Missouri



Dear Mr. Graves:

This Department acknowledges your telegram delivered today, in which you request an opinion. As your telegram states the question tersely and succinctly we herewith quote the same:

"The Board of Election Commissioners have adopted a rule following the suggestions in your opinion of recent date interpreting section ten thousand three hundred thirteen allowing judges of election to assist voters in marking their ballots. They have gone further and require in their regulation a signed oath. I would like to have your opinion as to whether or not under Section Ten thousand three hundred and thirteen the voter must sign an oath or whether the oath may be taken orally before any of the judges of election."

Bearing in mind our original interpretation of Section 10313, Revised Statutes Missouri 1929, in our opinion of March 15, 1938, we are now concerned with the expression, "any elector who declares under oath to the judges of election having charge of the ballot;" the rest of the section being to the effect that if said person cannot read or write, or by reason of physical disability is unable to mark his ballot

and may "declare" his choice of candidates to the judges having charge of the ballots. It appears that the electors, under the circumstances mentioned, "declare under oath" and "declares" his choice of candidates. Does the elector in "declaring under oath" do the same orally or in writing?

Webster's New International Dictionary defines "declare" as follows:

"To make clear; to free from obscurity; -- To make known by language; to communicate or manifest to others explicitly and plainly, whether by acts, words, writing, or signs; to publish; proclaim; announce; - -
- To make declaration of; to assert; to affirm; to set forth; to avow."

Words and Phrases, Volume 2, page 1904, defines the word "declare" as follows:

"The word declare signifies to make known, to assert to others; to show forth; and this in any manner by words or by acts, in writing, or by signs."

We think the general rule is to the effect that when a statute merely states, declares or says that an individual shall take an oath, the kind or purpose of the oath being immaterial, that the person taking the oath receives the same orally, the usual custom being by raising his open right hand, the rule being further to the effect that an "oral oath is sufficient unless a written oath is prescribed." 46 Corpus Juris, 843; Davis v. Berger, 54 Mich. 652, l. c. 654.

In order to compel the person making the oath to make the same in writing it would have been necessary for the statute to have contained statements, "declare under oath in writing" or "subscribe to an oath" or "make affidavit" or "make affidavit in writing."

The word "subscribe" is defined as, "to write at the bottom or end of a writing or instrument. " "A strict definition of the term involves the idea of a written signature or a writing." Loughren v. Bonniwell, 101 N. W. 287.

In order to make the point we call your attention to the fact that there are other election statutes which state when the oath shall be in writing and when certain election officials shall subscribe to an oath, as, for instance, Section 10236, Revised Statutes Missouri 1929. A situation analogous to the point which is now involved may be illustrated and deemed on a parity with Section 10271, Revised Statutes Missouri 1929, wherein it is provided that in a primary election any voter attempting to vote other than the ticket of the party with which he is known to be affiliated "when challenged, obligates himself by oath or affirmation administered by one of the judges to support the nominees of the ticket he is voting in the following general election." No court has ever construed this section to demand of the elector an oath in writing, and, we think, clearly, for the reason that the statute does not require that the oath be taken in writing.

Lastly, what is an oath and is it not synonymous with the word affirmation? It has been variously defined; a good definition being,

"An outward pledge given by the person taking it that the attestation or promises are made under an immediate sense of responsibility to God."

March 19, 1938

An oath is an

"appeal by a person to God
to witness the truth of what
he declares"

and

"an imprecation of divine
punishment or vengeance
upon him if what he says
is false."

CONCLUSION

We are of the opinion that the expression "declares under oath," as used in Section 10313, contemplates and means an oral oath; that had the legislature contemplated a written oath it would have used terms clearly stating that the oath should be taken in writing or that the elector should sign his name to an oath.

Referring to your inquiry wherein you state that the election commissioners, in view of our opinion of March 15, have adopted a rule that those electors who require assistance at the polls should make a signed oath, we do not believe that this class of voters should be subjected to any different rule or regulation than a person physically disabled or unable to read and write.

Respectfully submitted,

OLLIVER W. NOLEN
Assistant Attorney General

APPROVED

J. E. TAYLOR

(Acting) Attorney General

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