

ELECTIONS:
CLAY COUNTY BOARD OF
ELECTION COMMISSIONERS:

A circuit court may not order a board of election commissioners to register or reinstate an elector, unless said appeal to the circuit court is taken within two days after the elector has been denied registration or his name has been stricken from the register by said board, but no time is fixed within which the circuit court is required to make its order to the board; no provision is made by law whereby a tie vote by the members of the election board may be decided. In the case of a canvass of voters by mail the return of the postal card sent out may be made in any manner which the elector sees fit to employ, including the return of the card to the board by a candidate in a pending election.

August 20, 1954

Board of Election Commissioners
County Courthouse
Liberty, Missouri

Attention Alta V. Horton, Secretary



Gentlemen:

Your recent request for an official opinion reads as follows:

"I will appreciate an opinion from you for the guidance of our board to the following questions: 1st - in view of sec. 119280, paragraph 5, wherein the act states 'no such registration of any voters shall be permitted later than 5 weeks before a general or primary election or sooner than 15 days after an election in counties included in this chapter, and transfers of registration or reinstatement of voters shall not be permitted later than 21 days before any such election.' And further in view of section 119.360 provided that an applicant who has been denied registration may appeal to the circuit court and secure an order for registration provided further 'that said appeal to the circuit court must be taken within 2 days after said person has been denied registration or his name stricken from the register by said board'. In view of this, may the circuit court order the board to register or reinstate a voter other than within 2 days after said person has been denied registration or his name stricken from the register by said board?

"Second - When the Election board is divided two and two on any proposition may anyone else, including a circuit judge, decide the issue?

"Third - Section 119.340 provides for canvass of voters by mail, wherein a double postal card is used. Does this section impose the duty upon the individual

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receiving same to return the attached card themselves or would it be permissible for anyone, candidates included, to collect several of these cards and bring them into the office, where signatures would be compared.

"The Board is interested in creating good will but we are doubly interested in following the law."

Your first question is: May the circuit court order the board to register or reinstate a voter other than within two days after said person has been denied registration or his name stricken from the register by said board?

In regard to the above, we direct attention to the following portion of Section 17, Laws Mo. 1953, p. 696 et seq., which reads:

"* * * In all cases where any person is denied registration who makes application to register within the time and at the place fixed by this act, or if his or her name has been stricken from the register by the board of election commissioners, an appeal shall be allowed to the circuit court. No formal pleading shall be required, but it shall be sufficient for such person to present to the court an application verified by affidavit setting out that he or she has been denied the right to register by said board, or that his or her name has been stricken from the register, and the date of same, as the case may be, and such other information showing his or her qualifications as a voter in the precinct in which he or she claims a right to register. Said application shall first be presented to the board and shall contain a statement by said board or any member thereof, showing the reasons why said person was denied registration or his name stricken from the register. PROVIDED FURTHER, that said appeal to the circuit court must be taken within two days after said person has been denied registration or his name stricken from the register by said board. The court shall hear such application forthwith. Evidence may be introduced for and against said application. Each case shall be disposed of forthwith and the clerk of said court shall enter upon his records the disposition of said application. In the event the court shall sustain said application, the court shall forthwith notify the board of its action, and the board shall cause the applicant's name to be placed in the proper register and note the fact that

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said name was placed there by order of the court. No person whose name is admitted to the registry by order of the circuit court shall be protected by such order in case he shall be challenged or prosecuted for false registration or false voting." (Emphasis ours.)

It will be noted that the provision of the law on this matter is that the appeal to the circuit court must be taken within two days after the elector has been denied registration or after his name has been stricken from the register. The section continues with the statement that the court shall hear such application forthwith, but no time is fixed within which the order of the circuit court on the matter shall be delivered to the board. In view of this situation, our answer to your first question is that the circuit court may order the board to register or reinstate a voter at a time greater than two days after the said voter has been denied registration, or his name has been stricken from the register.

Your second question is: When the election board is divided two and two on any proposition, may anyone else, including a circuit judge, decide the issue?

In the absence of any authority vested in anyone not a member of the board, to vote on matters coming before the board, our answer to this question is likewise in the negative.

Your third question is: Does this section (119.340) impose the duty upon the individual, receiving a double postal card in a canvass by mail, to return the attached card themselves, or is it permissible for anyone, candidates included, to collect these cards and bring them to the office of the board?

In this regard paragraph 6, of Section 15, Laws Mo. 1953, page 693, reads:

"The board of election commissioners may conduct such canvass by mail, by forwarding through the United States mail notice to all registered voters to advise the board by return card, postage prepaid and attached to said notice, whether or not such voters then maintain their voting residences at the places designated in the registration records, and said board of election commissioners may require such voter to notify said board, by returning said attached card, duly executed by such voter, within a time designated by the board, of the fact that he or she still maintains his or her voting residence at the place designated on the registration records, and such other facts as may be lawfully herein required by said board, and upon the failure of said voter to

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return said attached card with the requested facts furnished and duly executed by the voter to the office of the board of election commissioners within such reasonable time as may be designated by the board, the board of election commissioners shall be, and hereby is, authorized to strike the name of said voter from the registration list and records, and such voter shall not be permitted to vote unless he or she shall first have been re-registered and reinstated, as in this act provided."

It will be noted that the above imposes upon the elector receiving the card the duty to "advise the board by returning the card, postage prepaid.* * *" Certainly this method of notifying the board by mail is not exclusive. If the elector took the card and handed it to a member of the board no objection could be made. If the elector procured someone to take it to the board for him, or allowed someone to do so, upon the solicitation of such person who, either through personal interest or a desire to aid in getting a full expression of public opinion in the coming election, asked the elector to permit him to take the card of the elector to the election board, we believe that such action would be legal. The entire object is to get the card back to the board, and so long as this is done without the card being altered in any way is, we believe, a full compliance with the law.

CONCLUSION

It is the opinion of this department that a circuit court may not order a board of election commissioners to register or reinstate an elector unless said appeal to the circuit court is taken within two days after the elector has been denied registration, or his name has been stricken from the register by said board, but that no time is fixed within which the circuit court is required to make its order to the board.

It is the further opinion of this department that no provision is made by law for breaking a tie vote on the board of election commissioners.

It is the further opinion of this department that in the case of a canvass of voters by mail, the return of the postal card sent out may be made in any manner which the elector sees fit to employ, including the return of the card to the board by a candidate in the pending election.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Hugh P. Williamson.

Very truly yours,

HPW/ld

JOHN M. DALTON
Attorney General