

GAME AND FISH COMMISSIONER:

The word 'householder' as used in Section 8246 defined.

Election under Section 8246 could not be enjoined or prohibited.

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10-15  
October 12, 1934



Honorable Wilbur C. Buford  
Game and Fish Commissioner  
Jefferson City  
Missouri

Dear Sir:

We acknowledge receipt of your letter dated October 10, 1934 as follows:

"This Department is desirous of your opinion of an interpretation of Section 8246 Game and Fish Laws of Missouri, as regards to the filing of a petition signed by one hundred or more householders for the closing of a season on quail in the respective counties; your interpretation of the word 'householders' and just how many in one family would be considered householders.

Also for the following example: A man's married son living under his father's roof, would the father and son each be counted as a householder?"

You also submit the further inquiry:

"Can a taxpayer enjoin an election under Section 8246 when Section 8246 has not been complied with; can a writ of prohibition be procured under the same circumstances."

We will answer your questions in the order in which we have stated them.

1.

Section 8246 Revised Statutes Missouri 1929 provides, among other things, that upon the filing of a petition signed by one hundred or more 'householders' of any county and presented to the county court, at any regular or special term thereof, more than thirty days before any general election to be held in such county, it shall be the duty of the county court to order the question as to whether or not there should be a closed season on quail for the next two years in said county to be submitted to the voters at such election. If a majority of the votes cast at such election be in favor of the closed season on quail, then the taking, capturing or killing of any quail or bob white within such county for a period of such two years is made unlawful.

The section above referred to has been held to be constitutional in the case of State v. Ward 328 Mo. 658.

The word 'householder' is defined in 30 C. J. at page 474, in the following language:

"A master of a family, a person who has charge of, and provides for, a family or household; one who occupies a house with his family; one who keeps house with his family; the occupier of a house; the head of a household; the master or chief of a family. The term implies the idea of a domestic establishment, or the management of a household, and of residence. It has been held to include married women, widows, widowers, and bachelors, provided they constitute the head of a family."

In the case of Fore v. Hoke 48 Mo. App. 254, the circuit court in appointing commissioners in a condemnation case, had described them as 'householders' instead of 'freeholders'. The statute requiring freeholders to be appointed to make the assessment of damages. In a discussion of whether freeholders had been appointed the court discussed the meaning of the word 'householder'. At page 261 of the opinion it is said:

"The word freeholder is generally used to designate the owner of an estate in fee in land. See Anderson's Law Dictionary, verb. 'Freeholder.' But the word householder means merely, according to Webster, 'a master or chief of a family; one who keeps house with his family.' Mr. Anderson in his law dictionary, a recent work of great merit, in like manner defines a householder to be 'head of a household; a person who has charge of and provides for a family or household.' And he adds that the word 'implies the idea of a domestic establishment, or the management of a household.' And Law Dict. verb. 'Householder.' He supports these definitions by the citation of many adjudged cases. It is plain from these definitions that a person may be a householder without being a freeholder, and we must hence conclude that the proceeding is void by reason of the failure of the record to recite that the commissioners appointed were freeholders."

Elliott v. Thomas 161 Mo. App. 441, had under consideration an exemption right under the homestead law and involving the definition of a 'housekeeper.' In that connection the court discussed the meaning of the word 'householder' and at page 447 of the opinion said:

"In this case, while this defendant was a member of a family, though not its head, during the life of her husband, yet, the lot in question was not acquired by her until after her husband's death, so as to this lot, she occupies the same position as if she had never been married, and if she can hold this property as exempt, she must do it because she is a housekeeper for she is not the head of a family. As far as its relation to a homestead is concerned we can see no difference between the meaning of the words 'housekeeper' and 'householder' when applied to the same individual. Webster defines 'housekeeper' as

'one who occupies a house with his family; a householder; the master or mistress of a family; one who does or oversees the work of keeping house.' It is apparent that the last definition could not apply for a person might oversee or do the work of keeping house merely as a servant and it is clear that the statute does not apply to a person acting in that capacity. The same author defines householder as 'The master or head of a family; one who occupies a house with his family.' Bouvier defines housekeeper as 'One who occupies a house,' then refers to the word householder. In defining householder, he quotes Webster's definition as above given. In the legal sense as used in a homestead statute to designate the parties entitled to the exemption the meaning of the two words seems to be synonymous. Some of the homestead statutes use the language, 'Householder or head of a family.' Our statute and that of Vermont use the language 'Housekeeper or head of a family.' As far as we can learn, the question involved in this case has not been passed upon by the Vermont courts nor by the courts of our own state. In those states in which the exemption is allowed to a 'householder or head of a family' it has been uniformly held that a householder within the meaning of the statute is one occupying a house with some one who is dependent upon him and has never been held to apply to one person occupying a house alone except in those cases in which the family became dispersed after the homestead right had attached. (Cadhoun v. Williams (Va.) 34 Am. Rep. 759; Lane v. State (Tex.), 15 S.W. 627; Kaltzenberg v. Lehman (Ala.), 2 Southern 272; Griffin v. Sutherland (N.Y.), 14 Barb. 456.)"

The meaning of the terms as used in the statutes are always dependent upon or to be construed in the sense and in light of the context in which they are used, so that no hard and fast rule can be laid down, but we think by the use of the word 'householder' in Section 8246 supra, was meant that the petition was to be signed by the head of the family and not by

any other member thereof. Of course there might be heads of two families under one roof, all depending on circumstances. We do not feel called upon to enter into a discussion on that controversial, if not hazardous, field of argument as to whether the husband or the wife is the head of the family in the legal sense, because we are of the opinion that what particular person is the head of a family always depends on the peculiar facts surrounding each particular case. In some instances it might be the husband and in another the wife, or in some instances some other member of the family.

2.

On the question of the right of a taxpayer to procure a restraining order or writ of prohibition against holding election above referred to.

What seems to be the general rule is stated in 32 C. J. 255, which reads:

"In the absence of statute conferring jurisdiction, the general rule is that an injunction will not issue to prevent the holding of an election whether the election is illegal or not, and that this is so whether the election relates to the filling of public office or other matters, such as changes in boundaries or political subdivisions and kindred matters."

After the holding of such an election, if the proposition purports to carry and if it is not held in compliance with the provisions of Section 8246, the Game and Fish Commissioner might be compelled by mandamus to issue a hunting license to a person in any particular county otherwise entitled thereto, or if the Game and Fish Department should issue a hunting license, notwithstanding the election, and the person holding same should proceed to hunt quail in a county where such election had been held and should be prosecuted therefor, the defendant in such a case could try out the question of whether or not the provisions of Section 8246 had been complied with, as a defense to the prosecution. If the section had not been

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complied with the prosecution could not be maintained.

This defense was made in many cases involving the validity of the adoption of the old local option law and we see no reason why the rule would not apply in this case.

Yours very truly,

GILBERT LAMB  
Assistant Attorney General,

APPROVED:

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ROY McKIPTRICK  
Attorney General.

GL:LC