

ELECTIONS: Occupants of private homes, partially supported by the county are not inmates of poorhouses within the meaning of the Constitution of the State of Missouri and Section 10178 R.S. Mo. 1929.

October 20, 1936. 10-20



Honorable Owen G. Jackson, Chairman,  
Board of Election Commissioners,  
Clayton, Missouri.

Dear Sir:

This department is in receipt of your letter of October 16, requesting an opinion as follows:

"One Deiselhorst, through an arrangement with the county court, conducts what is known as the Elm's Home at Ferguson. There are about forty old persons and unemployables who have shelter and board there. The county pays to said Deiselhorst the sum of thirty dollars a month per each inmate.

"We are informed, and it is a fact, that each inmate is required to do certain tasks in connection with the upkeep of this Home, such as scrubbing, cleaning and washing dishes; and that their clothing is provided through relatives or charitable institutions. Money contributions from other sources are also received by the Home.

"These persons have all been permitted to register and expect to vote at the general election. We are informed that their right to vote will be challenged under Section 10178 Revised Statutes of Missouri, 1929, which provides "that no person while kept at any poorhouse or other asylum at public expense \* \* \* shall be entitled to vote at any election under the laws of this state", while Article 8 of the State Constitution, Section 2 provides that "all citizens of the United States shall be entitled to

vote except persons while kept in any poorhouse at public expense."

"Will you please advise this Board whether in your opinion the inmates of the Elm's Home are entitled to vote at the general election?"

The question which you present has often been submitted to this department. It appears that the facts in the individual cases govern largely. The statute in question, Sec. 10178, R.S. Mo. 1929, disqualifies or prohibits persons while kept in any poorhouse or other asylum at public expense from voting. Section 2, Article VIII of the Constitution of the State of Missouri contains the proviso that no idiot, no insane person and no person while kept in any poorhouse at public expense shall be entitled to vote. The statute cannot be broader than the constitutional section. However, we are only concerned with the words "no person while kept in any poorhouse at public expense \*\*\*\* shall be entitled to vote."

The statute contemplated prohibiting persons under certain disabilities from voting. It is our opinion that it was the intention of the Legislature to prohibit persons legally committed to a county poorhouse or infirmary within the meaning of the statutes respecting the support of the county poor from voting. Section 12951, R.S. Mo. 1929 defines those deemed to be poor persons as follows:

"Aged, infirm, lame, blind or sick persons, who are unable to support themselves, and when there are no other persons required by law and able to maintain them, shall be deemed poor persons."

Sections 12953 to 12967 inclusive set forth the powers of the county court in respect to the general maintenance of the poor. Under Section 12950, R.S. Mo. 1929, it is mandatory on the county to relieve, maintain and support poor persons. It would appear that Mr. Deiselhorst is conducting a private home for poor persons in which the occupants do menial tasks and that he receives charitable contributions in the form of money and clothing for the occupants besides the sum of \$30.00 a month from the county for the support of each person.

The general rule, which varies according to the constitutional and statutory provisions in the state, is set forth in 20 Corpus Juris, Sec. 31, p. 72, as follows:

"It is a general rule, affirmed by constitutional or statutory provisions in some states, that as a rule persons supported in institutions maintained wholly or partly at public expense or by charity neither lose their right to vote at the places of their former residence nor acquire the right to vote in the districts wherein such institutions are located. A constitutional provision to this effect is not retroactive, nor does it apply to persons in institutions which are neither public nor charitable within the meaning of the law. Since, however, the question of intention is important, according to the weight of authority when a person voluntarily abandons his residence and becomes an inmate of a public or charitable institution with the intention of making it his permanent residence, he becomes a qualified voter in the precinct wherein such institution is located after the required period of residence, notwithstanding a constitutional provision of the nature already stated, but there are cases holding otherwise."

In the case of *In Re Registry*, 10 Pa. 213, it was held that former paupers in an almshouse who have been discharged as such but who remain in that institution under contract of services for hire, are entitled to vote as residents of the precinct.

Again, in 48 *Corpus Juris*, Sec. 257, p. 543, the general rule in regard to support in poorhouses, is thus stated:

"Unless the statute expressly confers on overseers of the poor the power so to do, they cannot remove and maintain a poor person, against his will, in a poorhouse outside of the poor district to which such poor person belongs. Under the statutes in some jurisdictions paupers may be sent to,

and kept in, the county poor-house at the expense of the county, if the provisions of the statutes as to the persons to be admitted and the proceedings preliminary to admission are complied with."

#### CONCLUSION

In view of the foregoing, it is the opinion of this department that the constitutional section and the statutory provision refer to persons who are legally committed to poor-houses or infirmaries within the meaning of Sections 12950 to 12967 inclusive, R.S. Mo. 1929. The fact that Mr. Deiselhorst receives compensation from the county would not of itself constitute his institution a poorhouse within the meaning of those sections unless it is primarily a part of the county poorhouse or infirmary and is regarded and treated as such by the county.

There are numerous persons throughout the State who receive support and aid from their county when not confined in a county infirmary, and this of itself does not disqualify such persons from voting. It would appear that Mr. Deiselhorst is more or less maintaining a private home and the arrangements with the county are probably temporary in nature. The occupants of the home are not permanent - they may leave at will or be removed by relatives or by Mr. Deiselhorst himself. We are therefore of the opinion that the occupants of the Elm's Home are entitled to vote in the coming general election.

Respectfully submitted,

OLLIVER W. NOLEN,  
Assistant Attorney General.

APPROVED:

---

JOHN W. HOFFMAN, Jr.,  
(Acting) Attorney General.

OWN:AH