

ELECTIONS:

ABSENTEE VOTING:

Senate Bill No. 31 excuses nonregistration of persons in military or naval service voting absentee ballots. Registration laws apply to such persons not voting absentee.

November 26, 1943

11/30



Honorable C. W. Detjen
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Dear Mr. Detjen:

Under date of October 29, 1943, you wrote this office requesting an opinion, as follows:

"I am writing to you as Attorney for the St. Louis County Election Board, serving by appointment of the Board under the provisions of Section 11908 R.S. Mo. 1939. The Board desires your ruling on the following questions pertaining to the St. Louis County Registration law, Chapter 76, Article 18, R.S. Mo. 1939:

"1. While Laws 1943, Section 11478A, seem to give any person in the military service, otherwise eligible to vote, a right to cast an absentee ballot even though he is not registered, there seems to be no provision authorizing such a person to vote at the polls, if he happens to return to his home on election day. This raises several questions, namely:

"a. Has the Election Board the right to enter his name on the registration lists in spite of the limitation in Section 11897 R.S. Mo. 1939 prohibiting the Board from registering new voters later than five weeks before general or primary election? In other

words does Section 7, Article 8 of the Constitution exempt him from the necessity of registering in advance?

"b. Has the Board the authority to permit him to vote without putting his name on the registration lists, if he furnishes satisfactory evidence that he is qualified to vote and was unable to register because of military service?

"2. If a voter is in military service and has not voted in person or by absentee ballot at any election during the past two years, should he be removed from the registration lists as provided in Section 11897 R. S. Mo. 1939?

"a. If it is held that the name should be stricken off of the registration lists for failure to vote, it appears that the voter could still cast an absentee ballot under Section 11478A, Laws 1943, but could he vote in person without having his name on the registration lists, if he happened to be at home at the time of the election?

"Your opinion in the above connection will be appreciated."

The limitation contained in Section 11897, R. S. Mo., 1939, mentioned in your letter, is as follows:

" * * * Provided further, that no such registration of new voters shall be permitted later than five weeks before a general or primary election, or sooner than fifteen days after an election in counties included in this article, and transfers of registration or reinstatements of voters shall not be permitted later than twenty-one days before any such election. The board of election commissioners shall order a canvass of

all registered voters not later than four weeks before each election and revise each canvass in the same manner as hereinafter provided for in this article."

In answering your questions it will be necessary to refer to the recently enacted laws passed by the 62nd General Assembly, Senate Bill 31, Laws of 1943; page 523, Senate Bill 41, Laws of 1943, page 526, Public Law No. 712, enacted by the 77th Congress, 2nd Session, (House Resolution 7416), and the Constitution of Missouri.

The provisions of the Missouri Constitution to be considered are Section 7 (referred to in your letter) and Section 9, Article VIII, which sections are as follows:

"Sec. 7. For the purpose of voting, no person shall be deemed to have gained a residence by reason of his presence, or lost it by reason of his absence, while employed in the service either civil, or military, of this state, or of the United States; nor while engaged in the navigation of the waters of the State, or of the United States, or of the high seas, nor while a student of any institution of learning, nor while kept in a poor-house or other asylum at public expense, nor while confined in public prison."

"Sec. 9. Qualified electors absent from the state on military or naval service shall, and qualified electors absent from their counties but within the state may, be enabled by law to vote at general or special elections."

Military service does not cause a loss of voting residence, and the legislature has been directed to provide a method for persons absent from the state on military or naval service to vote. The two bills above mentioned are following

this constitutional mandate and the provisions of Public Law No. 712, enacted by the 77th Congress.

Section 11478a, mentioned in your letter, is a portion of Senate Bill 31, Laws of 1943, page 523. This section is as follows:

"Any person being a duly qualified elector of the State of Missouri who expects to be absent from the State of Missouri by virtue of the fact that such person is a member of any of the various branches of the armed services of the United States as same may be defined by the Executive Departments of the United States of America, and who is so absent on the day of holding any special, general or primary election at which any candidates are chosen or elected for any congressional, state, district, county, town, city, village, precinct or judicial office or at which questions of public policy are submitted may vote at such election as hereinafter provided, regardless of whether or not said elector has complied with the provisions of any laws requiring the registration of voters."

In Senate Bill 41, Laws of 1943, page 526 and following, is Section 11474a, on page 530, a part of which is as follows:

"In lieu of the foregoing provisions for voting an absentee ballot any qualified elector who is absent from the state on military or naval service, and who may on the occurrence of any election mentioned in Section 11470 of this Act, be absent from his voting precinct because his duties require him to be without the State on the day of such election, may vote an absentee ballot by the following procedure: * * * "

This section contains seven numbered subsections. The first numbered subsection provides that the application by post-

card, provided for by Public Law No. 712 (H. R. 7416), enacted by the 77th Congress, when received by the Secretary of State, shall be taken as an application to vote an absentee ballot.

In subsection 4, page 533, is the following:

" * * * The Secretary of State, as applications and requests for absentee ballots are received by him, shall, from time to time, prepare for, and cause to be transmitted to the Clerks of the County Courts, or proper official in districts which have boards of election commissioners, of the residence of such voter, statements containing the names and addresses of such absent voters and appropriate information appearing on the application or request for the absentee ballot pertaining to such absent voter. Upon receipt of such statements it shall be the duty of such officials to post in a conspicuous public place in the office of such officials the names of such absent voters and their residence as shown by the said statement."

Senate Bill 31 also provides for application for absentee ballots in Section 11478b, Laws of 1943, page 524:

"Upon the request of such person in writing, by letter or otherwise, made not more than thirty nor less than two days prior to the date of such election to the county clerk or board of election commissioners, if any, or other official charged herein with the duty of furnishing ballots to such applicants, hereinafter referred to as an election official stating that at the time of such request he is a duly qualified elector of the State of Missouri and reasonably expects at the time of such election to be absent from the State of Missouri or from the United States

on the day of such election due to the fact that such person is in the armed services of the United States, such election official shall promptly append the name of such person to the list of applicants for absentee ballots in the manner and form provided for by Section 11472, Revised Statutes of Missouri, 1939, and such election official shall promptly mail to such person absentee ballot in the form and manner hereinafter provided: Provided further that written application for the mailing of absentee ballot to such person in the armed services of the United States may be made upon affidavit submitted by the father, mother or spouse of such person, in which case application and affidavit of the father, mother or spouse so applying shall contain a statement as to the military status of the person in the armed services for whom application is being made, his last known address and shall recite that no other similar application is being made on behalf of such person to the best of affiant's information and belief. When such request is made in connection with a primary election, ballots for each political party will be mailed with instructions that voter shall vote one ballot and return the remaining unvoted ballot. In the event more than one request or application for absentee ballot for such person or voter in the armed services should be received by the election official above referred to, an absentee ballot shall be mailed to such person in the armed services only upon and in relation to the first request or application made or received."

Senate Bill 31 was introduced February 11, 1943, and was approved June 25, 1943. Senate Bill 41 was introduced February 18, 1943, and was approved July 21, 1943.

By the provisions of Section 36, Article IV, of the Missouri Constitution and Section 659, R. S. Mo., 1939, both of

these statutes would become effective at the same time, ninety days after the adjournment of the session, as neither contained any clause making it effective earlier.

In considering statutes and determining their meaning there are certain rules of statutory construction which must be borne in mind. The primary rule of statutory construction is to ascertain and give effect to the intention of the lawmakers in enacting the law. *Meyering v. Miller*, 51 S. W. (2d) 65, 330 Mo. 885. A statute should be construed to give effect to the legislative intent. *Kelly v. Social Security Commission*, 137 S. W. (2d) 989. Statutes should receive a sensible construction which will effect the legislative intention. *Chrisman v. Terminal R. R. Assn.*, 157 S. W. (2d) 230.

Where two acts are passed at the same legislative session, relating to the same subject matter, they are in *pari materia* and must be construed together. In the case of *State v. Harris*, 87 S. W. (2d) 1026, at l. c. 1029, is the following discussion of rules of statutory construction:

"Assuming for the purpose of this case that section 4428 is a valid enactment, we have, then, two legislative acts passed at the same session of the Legislature, taking effect at the same time and relating to the same general subject. They should be construed together and if possible harmonized so as to give effect to each. *Gasconade County v. Gordon et al.*, 241 Mo. 569, 581, 145 S. W. 1160. If, however, the statutes are necessarily inconsistent, that which deals with the common subject-matter in a minute and particular way will prevail over one of a more general nature. *Gasconade County v. Gordon et al.*, *supra*. The rule is thus stated in *State ex rel. County of Buchanan v. Fulks et al.*, 296 Mo. 614, 626, 247 S. W. 129, 132, quoting from 36 *Cyc.* 1151:

"Where there is one statute dealing with a subject in general and comprehensive terms

and another dealing with a part of the same subject in a more minute and definite way, the two should be read together and harmonized, if possible, with a view to giving effect to a consistent legislative policy; but to the extent of any necessary repugnancy between them the special will prevail over the general statute. Where the special statute is later, it will be regarded as an exception to, or qualification of, the prior general one; and where the general act is later, the special will be construed as remaining an exception to its terms, unless it is repealed in express words or by necessary implication.'

"See, also, announcing the same rule, State ex inf. Attorney General v. Dabbs, 182 Mo. 359, 81 S. W. 1148; Gilkeson v. Missouri Pac. R. Co., 222 Mo. 173, 204, 121 S. W. 138, 24 L. R. A. (N.S.) 844, 17 Ann. Cas. 763; State ex rel. American Central Ins. Co. v. Gehner, 315 Mo. 1126, 1132, 280 S. W. 416, 418."

Where one statute deals with a subject in general and comprehensive terms, and another deals with a part of the same subject more specifically, the two should be read together, but if a conflict exists, the special one, treating a part of the subject more specifically, should prevail over the general. State ex rel. R. Newton McDowell, Inc. v. Smith, 67 S. W. (2d) 50, 334 Mo. 653; State ex rel. Bldg. & Loan Assn. v. Brown, 68 S. W. (2d) 55, 334 Mo. 781.

Of two statutes passed at the same session of the legislature, if there is a conflict, the one last approved will prevail. Lambert v. Board of Trustees, (Ky.) 152 S. W. 802, l. c. 805:

"And, in so far as two such acts are irreconcilable, the act which is approved latest supersedes the earlier act, and is to be treated as the expression of the legislative will upon the subject. Swinney v. Ft. Wayne, etc., R. R. Co., 59 Ind. 205;

Wright v. Tipton County, 82 Ind. 335;
Gibbons v. Brittenum, 56 Miss. 249; Gar-
rison v. Richards (Tex. Civ. App.) 107
S. W. 861. * * * "

Garrison v. Richards, (Tex. Civ. App.) 107 S. W. 861,
l. c. 865:

" * * * Where two acts are passed at the
same session of the Legislature they
should be construed together as one act,
and, if possible, so that both may stand.
McGrady v. Terrell, 98 Tex. 427, 84 S. W.
641; Lewis' Suth. on Stat. Const. sec. 268.
But where the two are repugnant and ir-
reconcilable, the one approved last repeals
the other to the extent of the repugnancy.
Bailey v. Drane, 96 Tenn. 16, 33 S. W. 573;
Lewis' Suth. on Stat. Const. sec. 280; 26
Amer. & Eng. Ency. of Law (2d Ed.) 736.
The above rule applies also where both acts
go into effect on the same day. * * *"

Peavy v. McCombs et al., (Idaho) 140 Pac. 965, l. c.
968:

" * * * While it is not necessary for the
purposes of this case to lay down a gen-
eral rule for all cases, we will say in
passing that we are inclined to the opinion
that, in case of an irreconcilable conflict
between two acts passed at the same session
of the Legislature, the one should prevail
which was last approved by the Governor;
the approval of the Governor being the last
act in the process of legislation under our
Constitution and statutes."

We have to consider two special statutes relating to
absentee voting by persons in military or naval service, ap-
proved by the Governor at different times, and general stat-
utes relating to the registration of voters and voting of
absentee ballots.

The intention of the legislature is obvious. It was to enable persons who might not be able to vote by reason of military or naval service to cast a vote at coming elections.

In the light of the foregoing rules of construction, your questions will now be discussed. Turning to your question (a) under paragraph 1, Section 11897, referred to, is a general statute pertaining to the registration of voters in counties which fall within the population classification defined in Article 18, Chapter 76, R. S. Mo., 1939, of which this section is a part. Section 11478a, Laws of 1943, page 524, is a later enacted special law applying only to voters who are in the military or naval service and who expect to be absent from their voting precinct, and, in regard to the classes of persons covered by this statute, would take precedence over the provisions of Section 11897 if any conflict should exist. By express provision, Section 11478a exempts the electors who expect to be absent from their voting precinct from the provision of any registration law:

" * * * regardless of whether or not said elector has complied with the provisions of any laws requiring the registration of voters."

Under this provision there is no occasion for placing on the registration lists the names of absentee voters in the military or naval service who follow the provisions of Senate Bill 31 relating to absentee voting. Senate Bill 31, enacted by the 62 General Assembly, Laws of 1943, page 523, contains no provision for late registration of electors who are in the military and naval service and who are in their proper voting precincts and who do not expect to be absent on the day of the election. There could then be no conflict and the provisions of Section 11897 would apply, and there could be no late registration, in the absence of some other provision in the law authorizing late registration.

What is said in regard to question (a) also applies to question (b). The provision of the recently enacted laws only treat of voters who expect to be absent and have followed the prescribed procedure. It could not cover registration of persons who did not expect to be absent and who had not followed the prescribed procedure for absentee voters.

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In regard to your paragraph 2, the laws here under consideration do not require the names of voters absent in the military or naval service to be kept on the registration lists. If any elector has failed to comply with the provisions of Section 11897, R. S. Mo., 1939, the name of such elector should be removed from the registration lists as provided by said section.

Answering your question (a) under paragraph 2, a voter in military or naval service whose name has been stricken from the registration lists could not vote in person, but by following the prescribed absentee procedure could vote an absentee ballot, if the voter expects to be absent from his precinct on election day.

Respectfully submitted

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APPROVED:

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