

ELECTIONS:

Inductees not yet  
sworn in cannot vote  
an official war ballot.

May 15, 1944.

5/23



Mr. W. H. Sperry  
Clerk of the County Court  
Clinton, Missouri.

Dear Mr. Sperry:

We have your request for an official opinion of this office  
which is as follows:

"Will you oblige by rendering an opinion  
on the following question? Are military  
inductees permitted to cast an "Official  
War Ballot" in the primary election of  
1944, by voting in person at the county  
clerk's office in Henry County Mo., on  
or before they are transported to their  
training centers."

The answer to your question depends upon a construction  
of Senate Bill No. 6, passed at the special session of  
the last legislature. For the purpose of this opinion, we  
are assuming that you mean by the term "inductees" persons  
who have taken the pre-induction physical, but who have  
not yet been sworn in to any branch of the service.

The title to the act reads as follows:

"Providing for voting absentee ballots by  
members of the military or naval forces,  
relating to the duties of the Secretary of  
State, county clerks and election officials  
in respect to such voting, and providing  
penalties for violations of the provisions  
of this act, with an emergency clause."  
(Underscoring ours)

Section 1 of the Act reads in part as follows:

"Any person being a duly qualified elector  
of the State of Missouri who is absent,  
or who expects to be absent, from the  
State or from the county in which he is  
a qualified elector, on military or naval  
service \* \* \*" (Underscoring ours)

It would seem from a reading of Section 1 that the Act meant to apply to inductees who had passed their physical but had not been sworn in. Section 2 of the Act however provides in part as follows:

"For the purpose of making application for an absentee war ballot to be voted in a general or special election by such absent voter as mentioned in this Act, the application by post card, which is provided for under the 'War Ballot Act' of the 77th Congress, Public Law 712, H. R. 7416, or any written request, telegram, cablegram or radiogram wherein are stated his name, voting address and the address to which the ballot desired by him is to be sent, shall be received and taken by the Clerk of the County Court or Board of Election Commissioners as an application to vote the absentee ballot provided for under this Act. For the purpose of making application for an absentee war ballot to be voted in a primary election by such absent voter, the applicant by any written request, telegram, cablegram or radiogram may make request to the Clerk of the County Court or Board of Election Commissioners of the County or City of his legal residence at the time of his induction into the armed forces, stating in his communication his name, voting address, and the military station, military post office or military address of his present station to which the ballot desired by him is to be sent."

\* \* \*

"Application for an official war ballot for any elector in the armed services of the United States, to be cast in any election, may be made in writing to the county clerk or to the board of election commissioners in the county or city in which the absentee elector was a legal resident at the time of induction into military or naval service, by the father, mother, spouse or next of kin of such person. In such case the applicant shall state under oath relationship between the person applying for ballot and the absentee elector and the military or naval status of the person in the armed service,

insofar as is known, for whom application is being made, his legal residence at the time of induction and his address to which the ballot is to be mailed." (Underscoring ours)

Section 5 which gives the form of the ballot has the following declaration:

"I declare under the penalties of perjury that I am a legally qualified voter of \_\_\_\_\_, Missouri. The County Clerk or Board of Election Commissioners will print the name of the County or City in the above space) My name together with my voting address at the time of my induction into the armed forces are correctly given below. I am at the present time in the military or naval service of the United States and in the course of my duty in such military service I expect to be absent from my voting precinct on the date of said election. I have not and will not vote elsewhere than at my legal voting residence, or otherwise than by this ballot at this election." (Underscoring ours)

The rule in construing such statutes is stated in the case of *Bowers v. Missouri Mut. Ass'n.* 62 S.W. (2d) 1058, 1.c. 1063. We quote:

"But all of its provisions must be considered as well as its evident purpose and its proper construction gathered from the whole, giving due effect to all parts thereof. Where certain terms of a statute are ambiguous, we are at liberty to go to the title of the act as a clue or guide to the intention of the Legislature. *Straughan v. Meyers*, 268 Mo. 580, 588, 187 S.W. 1159; *State ex rel. Bixby v. City of St. Louis*, 241 Mo. 231, 248, 145 S.W. 801. Laws are passed in a spirit of justice and for the public welfare and should be so interpreted if possible as to further those ends and avoid giving them an unreasonable effect. *Gist v. Rackliffe-Gibson Constr. Co.*, 224 Mo. 369, 384, 123 S.W. 921. In arriving at the legislative intent, doubtful words of a statute may be enlarged or restricted in their meaning to

conform to the intent of the lawmakers, when manifested by the aid of sound principles of interpretation. *Straughan v. Meyers*, supra, 268 Mo. loc. cit. 588, 187 S.W. 1159; *City of St. Louis v. Christian Brothers College*, 257 Mo. 541, 552, 165 S.W. 1057; *State to Use, etc., v. Heman*, 70 Mo. 441, 451. And it has been said that 'while we have no right to construe a law by our view of its expediency, we can take that feature into consideration in attempting to ascertain what was in the legislative mind.' *State ex rel. Asotsky et al. v. Regan*, 317 Mo. 1216, 1224, 298 S.W. 747, 749, 55 A.L.R. 773." (Underscoring ours)

#### CONCLUSION

It is the opinion of this office that since the title of the Act and sections 2 and 5 apply strictly to persons in the armed services, inductees who have not yet been sworn in are not entitled to vote the official war ballot, the provisions of Section 1 notwithstanding.

Respectfully submitted,

GAYLORD WILKINS  
Assistant Attorney General

APPROVED:

---

ROY MCKITTRICK  
Attorney General

GW.sc