

ELECTIONS: Any question of doubt concerning the
JUDGES OF ELECTION: identity of a voter who signs the
VOTERS: comparative signature card under
COMPARATIVE SIGNATURE CARD: Section 118.475, RSMo Cum. Supp. 1963,
must be decided against the voter by
a majority of all judges of election in the precinct before he may
be denied the right to vote by reason thereof. A voter who is
denied the right to vote on such ground is entitled to vote upon
complying with the procedure set out in Section 118.490, RSMo. A
voter who willfully refuses to sign the comparative signature card
is not entitled to vote.

June 1, 1964

OPINION NO. 128

Mr. James E. Crowe, Chairman
Board of Election Commissioners
for the City of St. Louis
208 South 12th Boulevard
St. Louis, Missouri



Dear Mr. Crowe:

We have your request for our opinion relating to the construction of Section 118.475, RSMo Cum. Supp. 1963.

This statute provides for a comparative signature card in connection with elections held in the City of St. Louis and in part provides:

"The judges of elections shall require each person to write his name and address on the card so that they may compare it with the signature which appears in the precinct binder as a means of identification, and any question of doubt concerning the identity of the voter shall be decided by a majority of the judges."

In reference to the quoted portion of the statute, you ask first concerning the procedure for the judges to follow in the event that a majority of the judges do not "approve" the signature of a voter and, second, whether the procedure set forth in Section 118.490, RSMo, or some other procedure is available to a person seeking to vote who fails to receive a majority approval of his signature. These questions may be answered together.

It would appear from your questions that they refer to a situation in which the judges of election are evenly divided in their views as to whether the signature on the card was in fact

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written by the same person who signed the precinct binder. It is the opinion of this office that in such a situation (an equal division of the judges of election) there is a sufficient identification of the voter to require two judges of opposite politics to initial the card of the person seeking to vote.

The general rule is well settled that election laws must be liberally construed in aid of the right of suffrage (Application of Lawrence, 353 Mo. 1028, 185 S.W.2d 818, 820) and that unless the Legislature specifically provides otherwise, a statute should not be construed adverse to the right of suffrage. We note that Section 118.475 has to do only with the requirement of signing the comparative signature card and the disposition of such card thereafter. No provision is made therein as to what effect, if any, is to be attributed to a decision of the election judges either in favor of or adverse to the identity of the voter as the result of a comparison of the signatures. If there is "any question of doubt concerning the identity of the voter", after such comparison, then such question is to be decided by a majority of the judges, which would logically mean that if there is a doubt respecting the identity of the voter, a majority of the judges must concur in the doubt, rather than that a majority must affirmatively find that the signature is that of the person who signed the precinct binder. Hence, unless a majority of the judges find against the voter's identity, the doubt is resolved in favor of the voter. Once identification of the voter is established (by failure of a majority to rule adversely thereto), then two judges of opposite politics must initial the card, and it is thereafter returned to the Board of Election Commissioners with the other election returns and filed by the Board with other election material as prescribed by law.

As noted, this section contains no provision at all with respect to the effect of the decision by the election judges of the question of "doubt" other than insofar as it requires that upon "identification" two judges of opposite politics initial the card. In our opinion, the result is therefore that all other provisions of the election laws relating to the City of St. Louis remain in full force and effect. All statutes in pari materia must be read and construed together.

Section 118.500, RSMo provides that the judges shall receive the vote of no person whose name does not appear upon the precinct register as a qualified voter. Obviously, if a majority of the judges find that the person seeking to vote is not in fact the person whose name appears on the precinct register, such decision against his identity would make it the duty of the judges of election to deny such person the right to vote. However, Section

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118.490, RSMo provides a procedure whereby a person whose vote is not received by a majority of the judges may vote upon producing the required affidavits set forth in that section. The latter section deals, among other things, with the "identity of the voter" and that he is "the identical person so registered". Although the procedure under Section 118.490 is expressly made applicable to formal challenges of the voter, we do not believe that the legislative intent was to so limit its application, and hold that it may be utilized by a voter in any situation in which he is denied the right to vote on the ground that he is not the person whose name appears on the precinct register. Moreover, there can be no doubt but that a challenge would be made either by one of the election officials or a party challenger if a person sought to vote in these circumstances. Hence, if a majority of the judges doubt whether the person seeking to vote is the same person as the one whose signature appears on the precinct register and deny him the right to vote on that ground, then the procedure prescribed by Section 118.490 may be availed of by the voter. This does not mean, however, that either a decision favorable to the voter or the filing of the affidavits to permit him to vote would immunize the person seeking to vote from prosecution for impersonation of a voter, if the facts warranted such prosecution.

You ask the further question as to whether the fact that the Board of Election Commissioners has assigned six judges to a precinct under the authority of Section 121.130, RSMo would authorize all six judges to participate in the decision of the question of doubt under Section 118.475. It is the opinion of this office that all judges have an equal right to participate in the decision of any questions which are to be determined by judges of elections, including the identity of a person seeking to vote. Hence, if there are six judges of election, instead of four, in precincts which use voting machines, then the majority contemplated by both Sections 118.475 and 118.490 would be a majority of the six judges acting in the precinct in question.

The last question concerns the procedure which should be followed in the event a voter refuses to sign the comparative signature card. Section 118.475, in mandatory language, provides that the judges of election "shall require" each voter to write his name and address on the card. In the event he is unable to do so, then he is permitted to make his mark. In our judgment, if a voter willfully refuses to comply with the mandate of the statute, then he may not be permitted to vote. It is true that the statute itself contains no such provision, but we believe that it is inherent in the requirements thereof. A voter should not be authorized to render nugatory the beneficial purposes sought to be accomplished by the statute.

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In a large community such as St. Louis, election judges may not know all voters personally and therefore the Legislature provided for some other means of identification. The statute serves to promote honest elections. For such reason, it is our opinion that the requirement is mandatory and not directory, even though the statute itself does not prescribe the consequences of the refusal of a voter to write his name and address on the signature card. The general rule relating to the distinction between directory and mandatory statutes is stated in State ex rel. Ellis v. Brown, 326 Mo. 627, 33 S.W.2d 104, 107 as follows:

"There is no universal rule by which directory provisions in a statute may, in all circumstances, be distinguished from those which are mandatory. In the determination of this question, as of every other question of statutory construction, the prime object is to ascertain the legislative intention as disclosed by all the terms and provisions of the act in relation to the subject of legislation and the general object intended to be accomplished. Generally speaking, those provisions which do not relate to the essence of the thing to be done and as to which compliance is a matter of convenience rather than substance are directory, while the provisions which relate to the essence of the thing to be done, that is, to matters of substance, are mandatory."

The requirement of the signature would therefore appear to be a condition precedent to the right to demand a ballot, just as much so as the requirement that the voter register and comply with all the requirements of the registration law. As above noted, Section 118.500, RSMo specifically provides that the judges shall receive the vote of no person whose name does not appear upon the precinct register as a qualified voter. The purpose of the signature card is, in part, to implement this statute. Hence, unless and until the voter signs the comparative signature card, the judges are not required to and should not receive his vote.

Nothing herein said should be construed to affect the right of a person to vote who is, by reason of physical incapacity, unable to sign his name or make his mark, if he is otherwise properly identified as being the person whose name appears on the precinct register.

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CONCLUSION

It is the opinion of this office:

(1) That if there is any question of doubt concerning the identity of a voter who signs the comparative signature card under the provisions of Section 118.475, RSMo Cum. Supp. 1963, a majority of the judges of election must concur in the doubt, and therefore if there is an equal division of such judges, there is a sufficient identification of the voter to require the card to be initialed by two judges of opposite politics;

(2) That if the judges of election deny a person the right to vote upon comparing his signature on the comparative signature card with the signature on the precinct register, the procedure set forth in Section 118.490, RSMo, is available to the voter to enable him to cast his ballot;

(3) That in any precinct in which there are six election judges, all such judges have an equal right to participate in the decision of any question, and that the majority contemplated by Sections 118.475 and 118.490 would be a majority of the six judges; and

(4) That a voter who willfully refuses to sign the comparative signature card as required by Section 118.475 is not entitled to vote.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Joseph Nessenfeld.

Very truly yours,


THOMAS F. EAGLETON
Attorney General