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ELECTIONS: Registration of Electors.

CITIES: Clerks.

TOWNSHIPS: Clerks.

The intent of the legislature in enacting Section 497 of the Michigan election law is to secure the maximum possible registration and to thereby encourage maximum participation in the electoral process.

Registrations may be accepted on Sunday by city and township clerks and such registrations are valid.

While registrations may be accepted on Sunday, whether to accept those registrations on Sunday is discretionary with the city or township clerk.

No. 4644

June 6, 1968.

Honorable James Del Rio
State Representative
The Capitol
Lansing, Michigan

You have requested my opinion on certain questions which may be phrased as follows:

1. Does an otherwise qualified citizen have a statutory right to register to vote on Sunday?
2. Is a registration taken on Sunday valid?

I shall consider these questions independently, and they will be answered seriatim.

I.

Article II, Section 1 of the Michigan Constitution provides in pertinent part:

"Every citizen of the United States who has attained the age of 21 years, who has resided in this state six months, and who meets the requirements of local residence provided by law, shall be an elector and qualified to vote in any election except as otherwise provided in this constitution. . ."

Article II, Section 4 of the Michigan Constitution provides in pertinent part:

". . . The legislature shall enact laws . . . to provide for a system of voter registration. . ."

Section 497 of Act 116, P.A. 1954, provides in pertinent part as follows:

"Any person not already registered who possesses the qualifications of an elector as set forth in section 492, may make application for registration to the clerk of the township, city or village in which he resides *on any day other than Sunday*, a legal holiday, the day of any regular, primary, school or special election. . ."¹
(Emphasis supplied)

¹ M.C.L.A. 1967 Ann. Supp. § 168.497, M.S.A. 1968 Cum. Supp., § 6.1497, as amended by Act 46, P.A. 1968, signed by the Governor on May 24, 1968.

The intent of the legislature in enacting section 497, supra, is to secure the maximum possible registration, and to thereby encourage maximum participation in the electoral process.

This legislative intent was recently interpreted in *Edwards v. Flint City Clerk*.² The Michigan Court of Appeals held that a township or city clerk had the authority to appoint assistants to take voter registrations in places outside the city or township clerk's offices. Indeed, house to house registration of electors was held legal in the absence of specific statutory prohibition. In the course of its opinion, the Court of Appeals cited an 1889 Michigan Supreme Court decision in which the policy underlying the laws governing registration of electors was extensively analyzed:

"The object of a registry law, or of any law to preserve the purity of the ballot-box, and to guard against abuses of the elective franchise, is not to prevent any qualified elector from voting, or unnecessarily to hinder or impair his privilege. It is for the purpose of preventing fraudulent voting. In order to prevent fraud at the ballot-box, it is proper and legal that all needful rules and regulations be had to that end; but it is not necessary that such rules and regulations shall be so unreasonable and restrictive as to exclude a large number of legal voters from exercising their franchise. Nor can the Legislature, in attempting, ostensibly, to prevent fraud, disfranchise legal voters without their own fault or negligence. The power of the Legislature in such cases is limited to laws regulating the enjoyment of the right, by preventing its abuse. The right to vote must not be impaired by the regulation. . . ."³

It is to implement this legislative intent that the courts of this state have consistently followed the principle of so construing voter registration statutes that the ability to register may be extended to the maximum number of persons and so that otherwise qualified persons will not be deprived of their right to vote. Former attorneys general of this state have recognized this legislative intent in providing that registrars may be assigned to various places in a city for the purpose of receiving registrations⁴ and holding that a registration taken on an election day will be considered a proper registration for elections subsequent to that held on the day the registration was accepted.⁵

In view of the foregoing, how should the statutory language prohibiting a person from making application for registration on Sunday be interpreted?

The interpretation most consistent with the aforementioned policy is simply that the statute affords no right to apply to a city or township clerk for registration on a Sunday, legal holiday, election day, or a limited time prior to an election. On any other day, the legislature has provided that a person who appears before a city or township clerk for the purposes of

² 9 Mich. App. 367 (1968). The Michigan Supreme Court denied application for leave to appeal, April 16, 1968.

³ *Attorney General, ex. rel. Edwin F. Conley, v. The Common Council of the City of Detroit*, 78 Mich. 545, 559, 560 (1889).

⁴ O.A.G. 1532, 1951-52, page 453.

⁵ O.A.G. 2339, 1955, page 758.

registration may properly demand that his registration be accepted, assuming he is otherwise qualified. No citation of authority is required to determine that the inability to exercise this right on Sundays, holidays, election days and a limited time prior to an election is a reasonable legislative restriction in the system of voter registration.

I conclude that an otherwise qualified citizen does not have a statutory right to register to vote on Sunday.

Having determined that no statutory right to demand registration on a Sunday exists and correspondingly no statutory duty to accept registrations exists, I am of the opinion that there is no legal means by which a person otherwise qualified to vote can compel a city or township clerk to accept his registration on a Sunday. A public official may be judicially compelled to perform an act by a writ of mandamus. But the issuance of a writ of mandamus presupposes the existence of a clear legal duty on the part of that public official.⁶ The act of accepting registration cards may be ministerial⁷ but the decision of whether to accept those registration cards on a Sunday is discretionary with the city or township clerk.

II.

But it would not be proper to say that a registration accepted on a Sunday is invalid. Such an interpretation would defeat the legislative intent of insuring that the registration laws provide full opportunity to register and do not bar an individual from exercising his constitutional right to vote. Assuming that the city or township clerk accepted the registration, a person should not be denied his right to vote on the ground that he registered on Sunday.

In fact, such an interpretation of registration statutes has prevailed in this country for many years. In an 1875 decision of the Wisconsin Supreme Court, it was held that a failure or error in the duty of inspectors, of which voters have no notice in fact, could not operate directly or indirectly to disenfranchise voters at an election. ". . . Nonfeasance or malfeasance of public officers could have no effect to impair a personal, vested, constitutional right. . . ."⁸ The New York Court of Appeals in the same year reached a similar conclusion, holding that the statutes governing the registration of electors are directory rather than mandatory, and the fact that election inspectors failed to take an oath of office or certify an election registration were not omissions that would deprive citizens of their constitutional right to vote.⁹

In *Rawlins v. The Overseers of West Derby*,¹⁰ the registration statute then in force¹¹ provided that persons ". . . who are desirous to have

⁶ 55 C.J.S., *Mandamus*, § 1 (1948).

⁷ *Rawlins v. The Overseers of West Derby*, *infra*.

⁸ *State ex. rel. Wood v. Baker*, 38 Wis. 71, 87 (1875).

⁹ *People ex. rel. Frost v. Wilson*, 62 N.Y. 186 (1875). These and other cases collected in *McCrary on Elections*, § 140 (1897), cited in O.A.G. 2339, *supra*, n. 5

¹⁰ 1 Barron & Arnold's Election Cases 599; 135 Eng. Rep. 868; 15 L.J.C.P. 70 (C.B., 1846).

¹¹ Parliamentary Voters Registration Act, 1843, 6 & 7 Vict. c. 18 s. 4.

their Names inserted in the Register [of voters shall] . . . give or send to the said Overseers, on or before the twentieth Day of *July* then next ensuing, a Notice in Writing, . . ." Several persons delivered the required notice to the overseers on the 20th of July, which happened to be a Sunday.

In holding that such notice might legally be given on Sunday, the court pointed out that the notice was not of a judicial nature, such as a writ of summons or a judgment, and in fact required no affirmative act on the part of the overseer:

"ERLE, J.—We should violate the express words of the statute, if we construed it as the revising barrister has done. Then it is said, that there is a hardship upon the overseer; but he is not called upon to perform any duty on that day, and there is nothing to interfere with his most strict observance of the Sunday."¹²

Thus it is my opinion that the acceptance of a Sunday registration, although not in pursuance of a statutory right, is valid in view of the constitutionally guaranteed right to vote.

In view of the foregoing, it is my opinion, therefore, that a voter does not have the right to demand that his registration be taken on Sunday. The question of whether to accept the registration on Sunday is discretionary with the city or township clerk and therefore legal means are not available by which he may be compelled to accept Sunday voter registrations. If his registration is taken on that day, however, such registration will be valid.

FRANK J. KELLEY,
Attorney General.

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CONSTITUTIONAL LAW: Funding of retirement benefits.

RETIREMENT SYSTEMS: Judges — Prohibition of state general fund appropriation.

Prohibition in Section 21 of the judges' retirement act of appropriation to the judges' retirement system from the state general fund is neither superseded or voided by, nor repugnant to Article IX, Section 24 of the Michigan Constitution of 1963.

No. 4613

June 10, 1968.

Mr. Lawrence L. Farrell
Executive Secretary
Judges' Retirement System
330 Lewis Cass Building
Lansing, Michigan

You have asked my opinion on a question which may be stated as follows:

Is the provision of the judges' retirement act prohibiting appropriations from the general fund of the state to the annuity reserve fund under that Act superseded or voided by the provision of the Michigan

¹² 15 L.J.C.P. 70, 72 (C.B., 1846).