

COPY OF REMARKS BY JOHN F. X. DAVOREN
SECRETARY OF THE COMMONWEALTH

at

CITY CLERKS SUMMER CONFERENCE
WYCHMERE HARBOR

June 30, 1972

The past two years have produced changes in the election laws which have been extremely difficult to control and to administer.

Before I get into some of them, and in particular the recent court ruling which removes the six months residential requirement for voters, I have one or two other matters I want to talk about.

First, in the mail to you now is a change in the method of supplying election material. I have here a copy of the new form which is a requisition for election supplies. There is a pile of them here at the rostrum to which you can help yourselves. Five copies of each form have been mailed to all of you, and should be in your office by the time you get back.

Next, we have according to custom, tried to keep you all on top of the latest developments in registration. We have been told by some that they had not been advised of the change in residential requirements. On March 31, we mailed to all clerks and commissioners a copy of the Tennessee Supreme Court Decision, and here it is. An analysis of that by your town counsel or city solicitor would have provided information as to what to do. My office was unable to during the days immediately preceding close of registration for the Presidential primary. We did advise all who telephoned to register any voter who was a bona fide resident, provisionally, and that was, of course, done by many of you.

In addition to that decision a case decided in Massachusetts, and I have a copy of it here: Civil Action Number 70-1404-F on April 10th, gave the ruling that the residency requirements for voting prescribed by the Massachusetts Constitution were invalid.

I have a copy of this and there are further copies of it on the table to which you may also help yourselves. In addition, a copy with a letter of transmittal is now in the mail and will probably be waiting for you on Monday morning when you reach your offices.

This case contains a second provision. Let me read it to you: "All provisional ballots cast in prior elections pursuant to interlocutory orders issued in this case are to be counted and tallied by the respective election officials."

We are sending a stencil of this to all city and town clerks and election commissioners. Enclosed will be a copy of the judgement by a United States District Court in the case of Singer, et al. v. The Election Commissioners of Boston and this office.

You will observe that the court ordered that the residency requirements for voting prescribed by Article III of the Articles of Amendments to the Constitution are invalid. This has the effect of removing the six months residential requirement for registration as a voter in the Commonwealth.

Advisory material from this office will reach you shortly, on the matter.

The second court order provided that all ballots which were cast and impounded during the primaries and elections in 1970 are now to be counted and tallied by the election officers.

The impounded ballots which have been kept in your vaults since 1970 should not be counted until an orderly method of counting and reporting the results to this office is worked out. Further information will reach you in this matter in a short time.

Note: Primary results may be tabulated by my office, but election results may only be tabulated by the Governor and Council .7

Consequently, it is best to wait for further instructions before we pursue the counting of the impounded ballots. We hope to have these in your hands shortly.

Next, -- we have had a problem over the past two or three years made by the fact that many women are insisting that they wish to register in their maiden name.

It is my understanding that this has now been permitted in the city of Newton while it is still being prohibited in the city of Cambridge.

In an attempt to make the situation uniform, legislation has been drawn, and will probably be inserted in this session.

I have it here and these are its provisions:

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. SECTION 2 of Chapter 51 of the General Laws, as most recently amended, is hereby further amended by striking out the first sentence and inserting in place thereof the following: -- If the name of a person who is duly registered as a voter is changed by decree of court, or, if a female, by marriage, his or her right to vote in his or her former name shall continue until January first next following, unless such female signifies in writing to the registrars that she prefers to retain registration under her former name.

SECTION 2. SECTION 36 of said Chapter 51 of the General Laws, as most recently amended, is hereby further amended by inserting after the third sentence the following: -- a married woman shall, upon written request to the registrars, be allowed to register in her maiden name.

(Here pause for groans, hisses, cat-calls and profanity)

The main purpose of my talk to you this morning is to make perfectly clear to you the action I have taken in the light of the wiping out of the residential requirement for voting. I inserted a bill providing that the residential requirement for a voter should be 31 days prior to the date of any state or municipal election.

The election laws committee has re-written the bill. The bill number is House 6189.

I have a copy ~~here~~ and its provisions contain no residential requirement whatever. It provides that a person who is a resident of the city or town at the time he or she registers may become a voter.

This means that the only residential requirement for voting at the state primary or state election will be bona fide residence at least on the 31st day prior, since that is the date of close of registration. To register for a special town meeting, as distinct from an election, a person need only be a bona fide resident on the 3rd day prior to the meeting, since this is when registration closes

This is probably the form in which the bill will become law. It contains a preamble and will be effective when signed by the Governor.

In the meantime, for your day to day operations, it is my advice, and you will receive it in writing shortly, that all applicants be registered. Once you are assured that they are bona fide residents, right up to the final day for registration.

This is no question of the meaning of the Supreme Court's ruling nor of that of the Federal Court in Massachusetts. Durational residential requirements for voters have been wiped out.

Your great problem will be one of evidence on bona fide residence.

As many of you know, I attempted earlier in the year to insert in the law a series of questions which could be asked by all registrars. To establish residence. The Legislature instead has come down with House 6190. I have a copy here and I will read it to you.

(Read the bill)

The bill reads, as you have heard, that you may accept a sworn affidavit, a rent receipt, a check, lease, telephone listing or letter from a voter in the city or town with personal knowledge of the candidate's residence.

Whether this bill will be enacted and signed by the Governor, I cannot tell you.

It is a part of the liberalizing of voter registration which has taken possession of the country over the past two or three years.

It may be that our suggested changes in some of these laws will be followed. It may be that the clerks can make their legislators aware of what is happening to the voting list.

For the present, the usual questions to establish residence or domicile in the city or town should be continued.

I will tell you this.

It may seem to you that the Massachusetts Legislature is enacting legislation which is systematically destroying ^{same} requirements for voting. But this is country wide. All fifty states are in the boat. The election officials of all fifty states are in the same quandary. The changes are happening with equal rapidity in the entire country, not merely in Massachusetts.

I will tell you this, too.

As with any series of changes -- it will take time to cover the flaws. It will take time to regulate the system, to prevent fraud, to prevent double voting.

I attended recently the meeting of the Secretaries of State of the entire country. The same problems which exist in Massachusetts, exist in every state.

We are not, by any means, the worst off of the states. Our system recently handled one of the toughest Presidential primaries ever -- one which gave severe indigestion to the systems of other states. In some states the courts even ordered the polls held open beyond the closing hour in the warrant, due to late opening, or long lines of voters, or a so-called "bedsheet ballot".

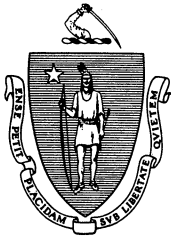
We in Massachusetts certainly had a "bedsheet ballot".

Our system -- which if I may say so is you, had as good a Presidential primary as any in the nation. May I take this opportunity to collectively congratulate and commend the Massachusetts Town Clerks for the excellent job you did in that primary.

So, don't be too afraid of the changes.

Norm Gleason says he intends to stick around for the next ten or fifteen years "just to find out what the hell happens". I advise the same to all of you.

Thank you.



The Commonwealth of Massachusetts
Office of the Secretary
State House, Boston 02133

John F. X. Davoren
Secretary of the Commonwealth

July 19, 1972

To All City and Town Clerks
Board of Registrars and
Election Commissioners:

Since the decision of the Supreme Court of the United States against the State of Tennessee decided that durational residential requirements for new voters in that State were not in conformity with the Federal Constitution, the requirement of the Massachusetts Constitution that a voter reside in the Commonwealth for six months prior to an election has been deemed invalid. A federal court case decided in April, in Boston, came to the same conclusion.

A copy of the Massachusetts case has already been sent to you.

The Court plainly states that the residential requirement contained in Article III of the Amendments of the Constitution is no longer valid. The second part of the order requires the counting of the ballots which were cast and impounded at the State Primaries and Elections in 1970. As you were advised do nothing at present in the counting of these ballots until further instruction reaches you. A method must be devised which will permit the simplest possible handling of this situation. A method of complying with the order is now under study by this office.

This advisory addresses itself principally to present residential requirements for voting in Massachusetts.

On July 7th the Governor signed, with Preamble, Chapter 587 of the Acts of 1972. This was an act further regulating the residency requirements for voter registration and absentee voting. The first section of the act, which was the most important one, provides: "Except as otherwise provided in Section one A, every citizen eighteen years of age or older, not being a person under guardianship and not being temporarily or permanently disqualified by law because of corrupt practices in respect to elections, who is a resident in the city or town where he claims the right to vote at the time he registers, and who has complied with the requirements of this chapter, may have his name entered on the list of voters in such city or town, and may vote therein in any such election, or except insofar as restricted in any town in which a representative town meeting form of government has been established, in any meeting held for the transaction of town affairs."

The effect of this is that a person who is a legal resident of any city or town on the 31st day prior to a state or presidential primary or state election can be registered on that day. A person who is a legal resident of a city or town on the 20th day prior to a special state election or a city or town election may register as a voter for that particular election on that day. A person who becomes a legal resident of a town on the 3rd day prior to a special town meeting can register on that day and vote at the special town meeting.

These facts flow naturally from the provision in Chapter 587 that a person "who is a resident in the city or town where he claims the right to vote at the time he registers" may be registered. No durational residential requirement whatever appears in the statutes.

It is inevitable that this will lead to problems in the method of proving bona fide residence. It was the intention of this office, and in fact a bill was filed by this office, that a pattern of questions, taken from a federal court case in nearby Connecticut be inserted in statute, in order that they might be asked of all applicants. This bill was not enacted.

It is consequently my advisory opinion to all of you based on present lack of any statutory direction that questions may be asked of a voter as to how long he has been a resident of a city or town prior to applying to register, but may not be used as a basis for denying registration.

If the person's name does not appear upon your street listing, it is possible that an affidavit may be obtained, somewhat similar to that specified in Section 9 of Chapter 51 of the General Laws, with the exception that the applicant may not be required to swear that he became a resident at least six months preceding the election. It is also recommended that registrars notify the city or town from which the applicant came (which implies that this is among the questions which should be asked of the applicant) that he has become a voter in the new city or town.

It is becoming increasingly obvious to all of us that massive changes in registration legislation in the Commonwealth have now become inevitable. The old method of an annual list of voters, cleared by a street listing taken in January and February, with drop notices mailed to those voters who are being dropped in April, can no longer work with any degree of accuracy.

Until legislation is devised, however, which will satisfy the present problems, it is the advice of this office that registrars, upon satisfying themselves that the applicant is a bona fide resident of the city or town, no longer have a choice but to register him on the day when he presents himself.

These are times of change, and change in registration is so rapid, that government itself cannot with enough speed devise a system which will prevent fraud and which will contain the least amount of clerical effort on the part of the clerks. The difficulties brought about by the new court rulings must be studied. The possibilities of computer voting lists must be explored. A registration form with a carbon copy for mailing to the former town of residence is another possibility.

But the conclusion is inescapable that no voter may be denied his right to a ballot if he presents himself for registration on the very day on which he moves into a new community. The obvious problems brought about by this will undoubtedly be cured one by one as solutions occur to you and to us.

For the present, it is my hope that this advisory opinion will at least clarify in the minds of clerks and registrars their present duties with regard to registration of new voters. We must await the guidance of the legislature prior to making the radical changes in the present street listing and voting list system which now seem inevitable.

Sincerely,


JOHN F. X. DAVOREN
Secretary of the Commonwealth

JFXD/ENM

City of Cambridge

That residential requirements contained
in the Article III of the Amendment of the
Constitution is no longer valid.

(July 19, 1972)