



STATE OF ARKANSAS
OFFICE OF THE ATTORNEY GENERAL
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STEVE CLARK
ATTORNEY GENERAL
OPINION NO. 85-177
August 5, 1985

Mr. John Burrow
Washington Co. Election Comm.
409 East LaFayette Street
Fayetteville, AR 72701

RE: Poll Workers

Dear Mr. Burrow:

I am writing this opinion in response to your letter in which you requested answers to the following three questions:

1. Can a poll worker challenge the vote of a person who lives outside the city but, nevertheless, is registered to vote in the city?
2. Are county clerks authorized to change the voting books to reflect the actual place of residence?
3. Are there criminal sanctions for those voters who choose to vote in the city election, but who actually reside outside the city?

The answer to your first question is no. A poll worker (a judge, clerk or sheriff) is not specifically authorized to challenge a voter at the polling place. Ark. Stat. Ann. §3-709(b) (1976 Repl.) states:

"The judge shall verify the existence of the voter's original affidavit of registration in the permanent registration file and the original affidavit shall reveal that the voter has presented himself at the correct precinct polling place."

Thus, the judge must rely upon the affidavit of registration forwarded by the permanent registrar. This does not, however, rule out a challenge by the candidate or a representative of the candidate pursuant to Ark. Stat. Ann. §3-714 (Cum. Supp. 1983).

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In answer to your second question, Section 11(g) of Amendment 51 to the Constitution provides:

..."The Permanent Registrar (County Clerk) is authorized, and may be directed by the County Board of Registration, to determine by mail check, house to house canvass or any other reasonable means at any time within the whole or any part of the county whether active Record Registration Files contain the names of any person not qualified by law to vote."...

Persons who live outside the city boundaries should not be allowed to vote for city officials. The Arkansas Supreme Court has long recognized that a voter must vote in the ward or precinct in which he resides. Christenson v. Felton, 226 Ark. 985, 295 S.W.2d 361 (1956); Wilson v. Luck, 203 Ark. 377, 156 S.W.2d 195; and Logan v. Moody, 219 Ark. 697, 244 S.W.2d 499. If a person changes his legal residence within the county he should cause his registration to be transferred to his new address by sending a mailed request to the County Clerk giving his present address and the address at which he was last registered or by applying in person. Section 6 of Amendment 51 requires that the affidavit of registration bear a current address, and if it fails to do so it does not constitute a proper registration. Furthermore, Subsection (g) of Section 11 of Amendment 51 states:

§11(g) "Furthermore, upon application based upon affidavits of one or more qualified voters by the Prosecuting Attorney for the county, the Circuit Judge of the county, for good cause shown, may order the Permanent Registrar to make such determination or cancel the registration of such unqualified persons." (emphasis added)

Application could be made by an election judge, clerk or sheriff pursuant to the above quoted section of the Constitution.

In answer to your third question, Ark. Stat. Ann. §§3-1104 and 3-1105 defines those offenses which are misdemeanors and felonies under the Political Practices Act. Ark. Stat. Ann. §3-1104(y) states:

"(y) No person shall willfully cause, or attempt to cause his own name to be registered in any other election precinct than that which he is, or will be before the next ensuing election, a qualified elector."

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The penalty for violation of Subsection (y) of Ark. Stat. Ann. §3-1104 is a misdemeanor which is punishable by a fine not exceeding \$1,000 or imprisonment not exceeding one year, or both the fine and imprisonment. (See, Subsection (ff) Ark. Stat. Ann. §3-1104). Additionally, Subsection (c) of Section 15 of Amendment 51 states:

"any person who willfully violates any provision of this amendment shall be guilty of a misdemeanor."

The foregoing opinion, which I hereby approve, was prepared by Assistant Attorney General Rick D. Hogan.

Sincerely,



STEVE CLARK
Attorney General

jsc:RDH:dc