



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN  
ATTORNEY GENERAL

December 22, 1980

MAIN PHONE: (913) 296-2215  
CONSUMER PROTECTION: 296-3751

ATTORNEY GENERAL OPINION NO. 80- 266

Ms. Mary F. Hope  
Commissioner of Elections  
Shawnee County Court House  
Topeka, Kansas 66603

Re: Elections--Registration of Voters--Registration by  
Naturalized Citizens

Synopsis: The Kansas voter registration statutes (K.S.A. 25-2301 et seq.) are the lawful means for ascertaining citizens who are constitutionally entitled to the right of suffrage. By virtue of these statutes, persons who are qualified electors must register to vote in order to exercise their right of suffrage, and if any such person is unable, for whatever reason, to effect proper registration during the times lawfully prescribed therefor, such persons may not vote. Such proscription applies to a qualified elector who achieves such status as a result of becoming a naturalized citizen within twenty days of a general election, a time when registration of voters is not permitted. Since there are no exceptions to such statutory constraints, and there are no statutory provisions that would permit registration in advance of the time when the naturalization process is completed, such person may not register or vote. Cited herein: K.S.A. 25-2301, 25-2302, 25-2306, 25-2311, Kan. Const., Art. 5, §§1,4.

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Dear Ms. Hope:

Prior to the last general election a question arose as to whether persons who would be taking the oath to become naturalized citizens of the United States prior to the date of such election, but subsequent

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to the date voter registration books were closed, were entitled to register and vote at such election. You were advised by the Shawnee County Counselor that such persons were not legally entitled to register or vote, and you now seek our formal opinion on this question, so that, if we concur in your county counselor's opinion, "the legislature will be able to consider legislation to cover such a situation in future elections."

As you are aware, the qualifications of electors are constitutionally prescribed, and "[e]very citizen of the United States who has attained the age of eighteen years and who resides in the voting area in which he or she seeks to vote shall be deemed a qualified elector." Kan. Const., Art. 5, §1. Although the legislature may not prescribe qualifications on the right to vote in addition to those set forth in the constitution [The State v. Monahan, 72 Kan. 492, 295, 496 (1905)], the legislature has enacted voter registration laws (K.S.A. 25-2301 et seq.) that prescribe registration as a condition precedent to the exercise of a qualified elector's right to vote. However, it has long been settled in this state that such laws do not constitute legislative imposition of an additional qualification upon the right to vote. State v. Butts, 31 Kan. 537 (1884).

In Butts, the Court held that "[r]equiring a party to be registered . . . is not in any true sense imposing an additional qualification, any more than requiring a voter to go to a specific place for the purpose of voting." Id. at 554. Moreover, in Butts the Court found that, under our constitution, "it is the duty of the legislature to provide for a registration of voters." Id. at 556. The constitutional provision prompting such conclusion is Article 5, Section 4 of the Kansas Constitution which, even though the wording was modified by amendment in 1974, remains substantially unchanged since the decision in Butts, requiring the legislature to "provide by law for proper proofs of the right of suffrage." Registration of voters, then, "is not a qualification to vote. It is merely an administrative process designed to facilitate rather than complicate participation in the election process." Duprey v. Anderson, 184 Colo. 70, 73, 518 P.2d 807, 809 (1974).

The Kansas legislature, therefore, has lawfully prescribed registration as the means for ascertaining "[c]itizens who are entitled to the right of suffrage" (K.S.A. 25-2301), and has made it "the duty of all legally qualified voters to register to vote." K.S.A. 25-2302. However, by the provisions of K.S.A. 25-2311(a)(3), registration may not be accomplished during "[t]he twenty (20) days preceding the day

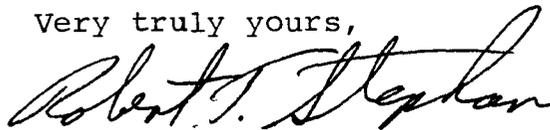
of primary and general state elections," and we find no apparent basis for questioning the validity of such provision as a rational requirement designed to ensure an orderly election process. As the Court stated in Butts, supra: "If the legislature has the right to require proof of a man's qualification, it has a right to say when such proof shall be furnished, and before what tribunal; and unless this power is abused the courts may not interfere." 31 Kan. at 555, 556.

By virtue of these statutory requirements, persons who are constitutionally entitled to the right of suffrage must register to vote in order to exercise such right, and if any such qualified elector is unable, for whatever reason, to effect proper registration during the times lawfully prescribed for registering to vote, such elector may not vote. Thus, even though the persons you have described became constitutionally qualified electors prior to the general election, by virtue of becoming naturalized citizens of the United States, such status was achieved at a time when registration of voters was not permitted, i.e., within twenty days of the date of the election. Since we are unaware of any constitutional or statutory provision which would permit any such person to register to vote in contradiction of such requirement, or to register in advance of the time when such person became a legally qualified elector, we must conclude that such persons were not legally entitled to register to vote at the immediately preceding general election.

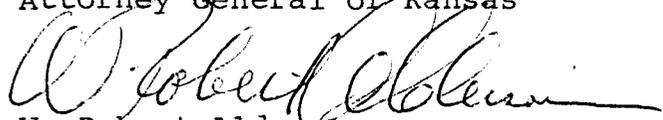
In reaching this conclusion, we note that K.S.A. 25-2306 permits registration by a person who is not a legally qualified elector by reason of being under the age of eighteen, if such person will attain such age prior to the next statewide general election. But no similar provision for advance registration has been made for persons who are not legally qualified electors by reason of citizenship. If the absence of such authority is a result of deliberate legislative consideration, it presumably reflects the fact that the attainment of naturalized citizenship, subsequent to the time when registration books are closed, is not a legal certainty at the time when registration is permitted. There is no assurance that the naturalization process will, in fact, be completed, whereas the fact of a person attaining the age of eighteen prior to the general election can be established with legal certainty.

We trust that the foregoing adequately responds to your inquiry. We believe that you were correctly advised by your county counselor.

Very truly yours,



ROBERT T. STEPHAN  
Attorney General of Kansas



W. Robert Alderson  
First Deputy Attorney General