

## 1948. 04. 09. 등록인 자료 파기

9 April 1948

TO: Brigadier General John Weckerling  
FROM: Ernst Fraenkel  
SUBJECT: Destruction of Registration Files.

1. It was reported that prior to the end of registration a mob entered the offices of a few voting district election committees of the City of Seoul and destroyed the registration files. The question was raised

- a. Whether the partial destruction of registration papers affects the validity of the election in the electoral district concerned;
- b. Whether a second registration is required in the voting districts concerned.

2. Section 16 of the Election Law as amended by Executive Order provides that "registration shall be accomplished by signing the registration paper or by making thumbprint upon the registration paper...some time during a period of eleven days beginning 41 days before the day of election." The wording of the law indicates that signature or thumbprint as such constitutes the act of registration. A registration paper duly signed or thumbprinted by a person eligible to vote represents conclusive evidence that the registrant accomplished registration in accordance with the pertinent provisions of the Election Law. The destruction of a registration paper by an act of God or by the illegal acts of third persons does not affect the validity of the registration; it removes only a particularly valuable piece of evidence.

3. It is generally recognized in the law of evidence that the accidental destruction of a legal document such as a deed, a will, or a bill of exchange does not affect the rights created by the production of the document. Each party is free to prove that the rights incorporated in the destroyed document were duly established and that the destroyed document fulfilled all the requirements prescribed by law.

4. In private litigations the burden of proof rests with the party who claims rights under a destroyed document. Registration of a voter does not establish a private right; it rather represents the exercise of a public function. The law of civil procedure concerning burden of proof is therefore neither directly nor by analogy applicable to the case under review. The

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reconstruction of a registration paper which was accidentally destroyed is not the responsibility of the registrant who "accomplished" registration by signing or thumbprinting the document; such responsibility rests with the government agency in charge of keeping the registration files.

5. When reconstructing registration files the election agencies are under an obligation to use all evidence available. The election agency may--in its own discretion--decide whether it shall rely primarily on statements of the election officials of the voting district or whether it shall investigate the persons eligible to vote in the voting district. The election agencies are, however, not authorized to require a second registration because registration is valid only within the period prescribed by law.

6. In view of the high registration in all voting districts of the City of Seoul the election agencies will in cases of doubt assume that a person eligible to vote in a voting district where the registration files were destroyed duly registered prior to the destruction of the registration files. Abuse of the discretion of a voting district election committee in the reconstruction of destroyed registration files may lead to the invalidation of the election in accordance with Section 44, Election Law; a defeated candidate is free to question the correctness of a reconstructed polling register provided, however, that an alleged mistake "may have caused a change in the result of the election" (Section 51, Election Law).

*Ernst Fraenkel*  
ERNST FRAENKEL

*Charles Fegler*  
Concur: CHARLES FERGLER

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