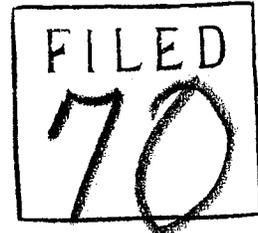


SCHOOL DISTRICT ELECTION:
ABSENTEE BALLOTS:

Section 7, of Article VIII, of the Constitution of Missouri, authorizes the Missouri Legislature to enact laws providing that absentee ballots may be cast in school elections. Also that the control of elections for directors in the first election held in a reorganized district is under the control of the county board of education; that all subsequent elections are under the control of the district board of education, and that these boards are the proper bodies to issue absentee ballots; also that absentee ballots should not be rendered in a school district election by the county superintendent of schools in any instance. When such ballots are issued by the county superintendent of schools, such issuance is improper but that it does not nullify such absentee ballots when they are properly cast, and that under such circumstances such absentee ballots should be counted, just as though they had been issued by the proper party.

June 10, 1954

Honorable John P. Peters
Prosecuting Attorney
Osage County
Linn, Missouri



Dear Sir:

Your recent request for an official opinion reads as follows:

"I have been requested to obtain from you an opinion concerning absent voting at a school election in our Reorganized School District Numbered two (2) of Osage County, with reference to the Election of School Directors, that being the proposition upon which their choice of candidates was expressed by ten 'Absent Voters' in our recent school election here April 6th. I will ask a few direct abstract questions first:

"1. Is our Constitution, and the provision therein, relative to 'Suffrage and Elections, and especially Section 7 of Article VIII, thereof, broad enough to and does it, authorize the law making body of our state to make provision for absent voting at School Elections?

"2. Has our legislature, and by the various sections of Chapter 112, R.S.Mo. 1949, 112.010 to and including 112.410 inclusive, authorized absent voting for election of directors at School elections?

"3. In our recent school election here there were 10 absentee votes, as I am informed, cast in the following manner; that is to say, applications for the blanks on which to make application for a ballot to be cast as an absentee ballot, were made to the Superintendent of Schools, who had supplied himself with forms used in County Elections, from the office of the County Clerk, (I am presuming that envelopes in which to mail them were also procured from the Clerk), some

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of these applications, for the blanks on which to make application, and a ballot, to the said superintendent, were orally and in person and some were requested by mail, and in each case the blank and ballot were furnished to the prospective voter, by said superintendent.

"4. The voted ballots, with choice of their candidates, and the verified applications therefor, were returned by U. S. Mail, to the Secretary of the School board, who in turn, delivered them to a canvassing board (I will call it) of 4 persons, who had been appointed by the acting president of the school board for that purpose.

"Now; The premises fully considered, in your opinion were these legally cast ballots, to be properly counted, and under all circumstances, including their return, and to the official returned, and properly counted, for the candidate for director for which they were cast?"

1.

It is my opinion that Section 7 of Article VIII of the Constitution of Missouri is broad enough to authorize the Missouri Legislature to enact laws authorizing absentee voting at school elections. This is in answer to your first question.

2.

Your second question is whether Chapter 112 RSMo 1949, authorizes absentee voting in an election held for the purpose of electing school directors. In this regard we direct attention to Section 112.010 RSMo 1949, which reads:

"Any person being a duly qualified elector of the state of Missouri, other than a person in military or naval service, who expects to be absent from the county in which he is a qualified elector on the day of holding any special, general or primary election at which any presidential preference is indicated or any candidates are chosen or elected, for any congressional, state, district, county, town, city, village, precinct or judicial offices or at which questions of public policy are submitted, or any person who through illness or physical disability expects to be prevented from personally going to the polls to vote on election day, may vote at such election as herein provided."

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I believe that an election held for the purpose of electing school directors clearly is an election held within a "district" as provided above. I believe also that such an election is a "general election", when held at a regular time set by statute each year, or a "special election", when not so held, which is the case at the first organization election, within the meaning of Section 112.010, supra.

In the case of *Dysart v. City of St. Louis*, 11 S.W. (2d) 1045, at l.c. 1052, the court in its opinion stated:

"* * * But the definition of 'general election' is settled by an amendment to the Constitution adopted in 1920 (see Laws 1921, p. 703), by which section 12 of article 10 was repealed, and another section by the same number adopted. It provides:

"No county, city, town, township, school district or other political * * * subdivision of the State shall * * * become indebted,' except by a two-thirds vote at an election held for that purpose; and, 'such proposition may be submitted at any election, general or special.'

"It follows that any local election, city, county, etc., may be either general or special, and this wipes out the definition of 'general election' in section 7058, or limits the implied distinction to state elections.

"It necessarily means that a special election is one called for a special purpose, not one fixed by law to occur at regular intervals. A primary election and a regular election are connected together in section 35 in regard to general registration, with the same requirement for a revision before a primary election as there is before a final election to elect officers. Therefore it avails nothing to distinguish a primary election from the statutory definition of any other general elections.* * *"

It seems clear, therefore, that since an election held to elect school district directors is a general election, or a special election, as the case may be, held within a district, that, according to Section 112.010, supra, absentee ballots may be cast at such an election.

3.*

You next state, simply as a matter of fact, that these absentee ballots were issued by the county superintendent of schools. In this regard we direct your attention to Section 165.687 RSMo 1949, which

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reads:

"If the proposal to form such enlarged district has received a majority of the votes cast on such proposition the county board of education shall order an election in such enlarged district, at a time and place or places to be fixed by the county board of education, not more than thirty days after the date of the election when such enlarged district was formed, for the purposes of electing six directors in such enlarged district. The election shall be conducted in the manner as provided by section 165.330. Until such time as a majority of the district board members of the enlarged district are elected and qualified, the county board of education shall perform such duties with respect to conducting the election as would be performed by the district board of education were it in existence, but the costs of election shall be paid from the incidental fund of the enlarged district. Two directors shall be elected to serve until the next annual school election, two to serve until the second annual school election, and two to serve until the third annual school election. After the expiration of the initial terms, members elected shall serve for three years. The directors above provided shall be governed by the laws applicable to six-director school districts."

From the above it seems plain that the first election held in the reorganized district has to be conducted by the county board of education, and that all subsequent elections are to be conducted by the district board of education. Therefore, it would seem that the county board of education is the proper body to furnish absentee ballots in the first election, and the district board in all subsequent elections, but that in no instance is the county superintendent of schools the proper person to do this. However, in your case, the county superintendent of schools did furnish these ballots. Our problem, therefore, is the effect of this impropriety upon the validity of the absentee ballots when cast.

So far as appears from your letter, the method of applying for absentee ballots (Section 112.020 RSMo 1949) was substantially complied with; there is no indication that any person who voted an absentee ballot was not entitled to do so; the absentee ballots were returned to the proper party, and were, so far as appears, properly counted. In brief, it seems that the entire procedure was proper, except for the fact that the wrong party issued the ballots. Will this render void these absentee ballots? In this regard we note that so far as appears there is no statutory or case law which either states or implies that such an irregularity will render the absentee ballots null. We also note the fact that the whole tendency of

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of the law is to construe election laws liberally in favor of the right of suffrage.

In an opinion rendered August 9, 1950, to Honorable Albert D. Nipper, Prosecuting Attorney of Washington County, this department held:

"Therefore, it is the opinion of this department that an absentee ballot cast by a person legally entitled to vote the same may be counted, although the county clerk might have solicited the application from the voter, taken the application from the voter at his home, and at the same time furnished the ballot, and upon its being voted has accepted it and has either returned it to the original county or has taken it and mailed the same to the clerk's office.

"We are further of the opinion that the fact that no list of applicants for absentee ballots has been posted as required by Section 112.03, House Bill No. 2050, Sixty-fifth General Assembly, does not render invalid such voter's ballot, and that such ballot may be counted. We are further of the opinion that such ballot may be counted although a particular applicant's name has been omitted from the list, although his postoffice address is not given, or although his street address is not given. We are further of the opinion that after ballots are deposited in the clerk's hands, they can lawfully be counted, although no list of voters is posted as required by Section 112.06, House Bill No. 2050, Sixty-fifth General Assembly, or where the name of a particular voter has been omitted from such list."

In an opinion (a copy of which is enclosed) rendered by this department on October 21, 1952, to Honorable Robert L. Hey, Prosecuting Attorney of Saline County, we held:

"Therefore, it is the opinion of this office that an absentee ballot cast by a person legally entitled to vote the same may be counted although such ballot may have been obtained more than thirty days prior to the election, Section 112.020, RSMo 1949, relating to time of application being directory only."

In view of the above, and of the further fact that the persons who cast absentee ballots in the instant election appear to have been entitled to do so, we do not feel that their vote should be nullified because of the mistakes of others.

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CONCLUSION

It is the opinion of this department that Section 7, of Article VIII, of the Constitution of Missouri, authorizes the Missouri Legislature to enact laws providing that absentee ballots may be cast in school elections.

It is the further opinion of this department that the control of elections for directors in the first election held in a reorganized district is under the control of the county board of education; that all subsequent elections are under the control of the district board of education, and that these boards are the proper bodies to issue absentee ballots; also that absentee ballots should not be supplied in a school district election by the county superintendent of schools in any instance.

It is our further opinion that when such ballots are issued by the county superintendent of schools that such issuance is improper, but that it does not nullify such absentee ballots when they are properly cast, and that under such circumstances such absentee ballots should be counted, just as though they had been issued by the proper party.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Hugh P. Williamson.

Very truly yours,

HPW/ld

enc. (1)
Opn. Robert L. Hoy,
10-21-52

JOHN M. DALTON
Attorney General