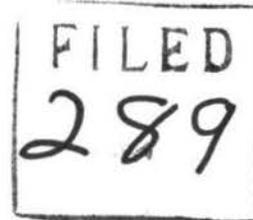


ELECTIONS: (1) A person may be designated to
ELECTION CLERKS: serve as an election judge or clerk
ELECTION JUDGES: in a precinct in which he does not
reside if the election authority cannot find sufficient qualified persons within the precinct to act as election officials, and (2) persons so selected can vote an absentee ballot if the precinct in which they serve as election judges or clerks is located outside the county where they are registered to vote but not otherwise.

OPINION NO. 289

October 18, 1974

Honorable Lowell McCuskey
Prosecuting Attorney
Osage County Courthouse
Linn, Missouri 65051



Dear Mr. McCuskey:

This is in response to your request for an opinion. In the request you have asked the following question:

"Can an election judge or clerk be designated to serve in a precinct in which he does not reside when the appointing authority cannot find sufficient qualified persons within the precinct who will act as election officials, and if so, whether such persons can vote an absentee ballot."

Section 111.171, RSMo 1969, concerns the qualifications of election judges and clerks. That section provides as follows:

"1. No person shall be qualified to act as judge or clerk of any registration or election in this state unless he is legally entitled to vote at the next election following his appointment. He must be a person of good repute and character who can speak, read and write the English language. He must reside in the precinct, ward, township or election district for which he is selected to act. He must not hold any office or employment under the United States, the state of Missouri, or under the county, city, or other political

Honorable Lowell McCuskey

subdivision involved in the election to be held at the time of his appointment. He must not be a candidate for any office at the next ensuing election but a notary public shall not be disqualified from acting as a judge or clerk.

"2. No person shall be appointed or serve as judge or clerk in any election or registration who has been convicted of an offense punishable by imprisonment by the state department of corrections, or who has been convicted and confined in a county jail, workhouse or house of corrections within five years prior to his appointment." (Emphasis added.)

As is clear from Section 111.171, an election judge or clerk must reside in the precinct, ward, township, or election district for which he is selected to act. However, a variance from this statutorily required qualification will not invalidate an election.

". . . the law governing the appointment of judges and clerks is clearly directory, and courts will not nullify the result of votes honestly cast and counted, although the statute has not been strictly complied with. . . ." Breuninger v. Hill, 210 S.W. 67, 71 (Mo. Banc 1919).

It is true that an election will not be deemed invalid when the statute concerning election judges and clerks is not complied with literally. However, this is not the same as saying that no effort need be made to comply with the law. Sanders v. Lacks, 43 S.W. 653 (Mo. 1897), demonstrates the need to follow the statutory requirements.

". . . No voter should be disfranchised on account of a mere irregularity occasioned by the neglect or misconduct of election officers (over whose conduct he has no control), unless the legislature has declared that such irregularity, neglect, or misconduct should avoid the election, or render the voter's ballot illegal. . . . [However] There was no evidence that there was in this any intentional or fraudulent deviation from

Honorable Lowell McCuskey

the law, or anything other than an innocent mistake as to the demands of the election statute. . . ." Id. at 654.

Thus, it is the opinion of this office that a good faith effort must be made to follow the election law requirements. Even though an election would not be overturned because of irregularities, variances from the requirements should not intentionally be allowed. Nonetheless, as we pointed out in our Opinion No. 116, issued March 13, 1974, to the Honorable James C. Kirkpatrick, copy of which is attached hereto, the law does not require the impossible. If there are not sufficient qualified persons within a precinct who will act as election officials, we believe it is better to conduct the election within that precinct with judges and clerks who are not residents of the precinct than without any judges and clerks at all. We believe it is more important to have appropriate officials to supervise the conduct of the election than it is to require that such officials comply strictly with Section 111.171.

Your second question is whether persons appointed from outside a precinct to serve as election judges or clerks within such a precinct may vote an absentee ballot. This question is governed primarily by Section 112.010, RSMo Supp. 1973, which provides as follows:

"Any duly qualified voter 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 voter on the day of 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 or any person whose religious beliefs prevent him from personally going to the polls to vote on election day, may vote at such election as provided in sections 112.010 to 112.110."

From this statutory provision, we conclude that a person selected to serve as a judge or clerk of an election held in a

Honorable Lowell McCuskey

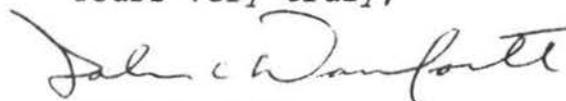
precinct other than the one in which he resides may vote an absentee ballot only if he is serving as a judge or clerk in a precinct located outside the county in which he is a qualified voter. There is no provision in Section 112.010 which would allow a person to cast an absentee ballot for the reason that he will be absent from the precinct in which he is registered to vote.

CONCLUSION

Therefore, it is the opinion of this office that (1) a person may be designated to serve as an election judge or clerk in a precinct in which he does not reside if the election authority cannot find sufficient qualified persons within the precinct to act as election officials, and (2) persons so selected can vote an absentee ballot if the precinct in which they serve as election judges or clerks is located outside the county where they are registered to vote but not otherwise.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Mark D. Mittleman.

Yours very truly,



JOHN C. DANFORTH
Attorney General

Enclosure: Op. No. 116
3-13-74, Kirkpatrick