

RELATING TO THE METHOD BY WHICH ABSENTEE ELECTORS
MAY CAST THEIR BALLOT IN A GENERAL ELECTION OR
A PRIMARY.

6-5
May 31, 1934



General H. W. Brown
Jefferson City, Missouri

Dear General:

This department acknowledges your letter of date
May 12th, 1934, in which you state and inquire as
follows:

"We will have in the neighborhood of two
thousand (2,000) troops in camp from August
5 to 19, 1934, who are voters in the State
of Missouri.

Will you kindly render an opinion as to the
proper method to pursue in voting these men
in the August primary?

Thanking you in advance, I remain,"

Section 9 Article VIII of the Constitution of
Missouri reads as follows:

"Qualified electors absent from the state on
military or naval service shall, and qualified
electors absent from their counties but within
the state, may be enabled by law to vote at
general or special elections."

Section 10181 Laws 1933, page 219 provides as follows:

"Any person being a duly qualified elector of the
State of Missouri, who expects in the course of
his business or duties 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, may vote at such election as
hereinafter provided."

It will be observed from the above section that in
order for one to vote an absentee ballot that the following
must appear:

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- (1) He must be a qualified elector of the State of Missouri.
- (2) He must be absent from the county in which he resides and holds his citizenship on the day of the election or primary.
- (3) That it must be a special, general or primary election.

Section 10182 Laws of 1933, page 219, provides as follows:

"Any elector as defined in the foregoing section expecting to be absent from the county of his residence on the day of such election may, not more than thirty nor less than five days prior to the date of such election, make application in person, to the county clerk or, where existing, to the board or election commissioners, or other officer or officers charged with the duty of furnishing ballots for such election in his voting precinct, for an official ballot for said precinct to be voted at such election."

The following section 19183 Laws of 1933, page 219, provides a form of affidavit to be signed by the applicant. It will be noted that the voter makes oath that he is entitled to vote, and that he will be absent from his county on the day of the election of the primary. And that the official charged with the duty of furnishing such ballots shall send them by registered mail, postage prepaid or deliver in person an official ballot or ballots if more than one is to be used at the election.

It will be observed from the above sections that the following proceedings shall be observed.

- (1) That not more than thirty nor less than five days prior to the date of such election or primary the voter must, in person, apply to the county clerk or the officer whose duty it is to furnish ballots for such election, and make his application for an official ballot.
- (2) That the voter must make an affidavit that he will among other things, be absent from the county of his citizenship on the day the election or primary is held.
- (3) The county clerk or the official whose duty it is to furnish ballots, after the ballots have been printed must send a proper official ballot by registered mail or deliver in person to those applying and not possessing them.

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Section 19184 of the same Act provides that the voter must take his absentee ballot before some person authorized to administer oaths in the State of Missouri and there swear to be true the facts stated therein, among other things that he is entitled to vote, that he will be absent from the county of his citizenship on the date of said election or primary, and that he mark the enclose ballot in secret, and that he had not voted and would not vote elsewhere or otherwise and by that ballot at that election or primary.

The officer that administers the oath likewise certifies to the above facts, namely, that the votes exhibited the ballot unmarked and then in his presence, but not in such manner that he could see how such person voted, and that the ballot was marked and sealed in the envelop.

Section 10185 of the same Act provides in part as follows:

"....and the envelope shall be by such voter sent by mail, postage prepaid, to the officer issuing the ballot, or, if more convenient, it may be delivered in person and such official issue his written receipt therefor, but in any event it must be returned into the hands of the issuing official not later than 6 o'clock p.m. of the next succeeding the day of such election."

Section 10186 provides in part as follows:

"Provided, however, that no ballot shall be counted by said judges which has not been received and filed by the issuing official or officials within the time by this act required."

Section 10188b provides in part as follows:

"Whenever it shall be made to appear by due proof that any absent voter, who has returned his vote as provided in this act, has died prior to the opening of the polls on the date of the election, then the ballot of such deceased person shall be rejected by the judges appointed to open, count and determine the votes of absent voters, but the casting of the ballot of a deceased voter shall not operate of itself to invalidate the election."

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From the above sections it will be seen that in order for one to vote his absentee ballot that he must have obtained the ballot; that he must have appeared before some officer authorized to administer oaths in the State of Missouri; that one might have his ballot marked before the day of election or primary, however, if one marks his ballot before the day of election or primary, he must make an additional affidavit that he will not be in the county where he is entitled to vote on the day of the election or primary; thus he would be swearing to a fact he knew would exist.

Section 19183b supra. bears out the construction that one does not as a matter of fact have to mark the ballot on the day of election or primary, but may do so before hand; also that the ballot must be in the hands of the officer issuing the same not later than 6 o'clock on the day next succeeding the election or primary.

We have attempted to outline as definitely as possible the procedure to be followed that an absentee elector may be entitled to vote at the August Primary, 1934, and trust that it will be of some service to you.

Yours very truly,

W. W. Barnes

W. W. Barnes
Assistant Attorney-General

APPROVED:

Ray McKittrick
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