

ELECTIONS:

Absentee Ballots - Voter may cast absentee ballot in office of County Clerk within time prescribed by law and leave the ballot with said Clerk to be opened and counted in manner prescribed by law.

September 18, 1934.



Hon. Walter C. Jackson,
Clerk of County Court,
Bloomfield, Missouri.

Dear Sir:

This department acknowledges receipt of your letter of some time ago relative to the absentee ballot. We regret that due to the numerous requests which we received for opinions prior to the primary election, in addition to our many other duties, we were unable to furnish you the opinion at that time; however, we assume this question will again present itself in the coming general election and we presume the opinion will be of value to you at that time. The question contained in your letter is as follows:

"Can a qualified elector in applying to the County Clerk in his county at the time of making his affidavit for an absentee ballot obtain that ballot then and there within the time specified, vote his ballot at that time and have the same held up by the County Clerk or Board of Election Commissioners, or will it be necessary for the Clerk to take the application for the ballot and mail the same to the address given in the affidavit, and mailed back to the clerk when voted?"

The Legislature of Missouri in 1933 enacted the new sections relating to absentee ballots, same to be found in Laws of Mo. 1933 beginning on page 219. Due to the fact that this law has been so recently enacted, there are no court decisions construing the various sections; hence, we must construe the sections according to the plain wording of the same.

Section 10185, Laws of Mo. 1933, page 222, provides as follows:

"Such absentee voter shall make and subscribe to the affidavits provided for in the application, and on the return envelope for said ballot before an officer authorized by law to administer oaths in this state, and such voter shall exhibit the ballot to such officer unmarked, and shall thereupon in the presence of such officer and of no other person mark such ballot or ballots, but in such manner that such officer cannot see or know how such ballot is marked, and such ballot or ballots shall then in the presence of such officer deposited in such envelope and the envelope securely sealed. Such officer shall then write or print upon said envelope the following: 'Absentee Ballot of (insert name of voter) marked and sealed in my presence' which certificate shall be signed by such officer and his official title noted thereon, 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 day next succeeding the day of such election."

We specifically call your attention to the phrase in the above quoted section "or, if more convenient, in 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 day next succeeding the day of such election."

There is a proviso in Section 10186, Laws of Mo. 1933, page 223, which is 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."

CONCLUSION

By a close scrutiny of the statute we find no provision against a person casting an absentee ballot in the office of the

County Clerk within the time prescribed by law and leaving the ballot with said County Clerk to be opened and counted in the manner prescribed by law.

The County Clerk has the seal and is authorized by law to administer oaths, and it is the opinion of this department that by reason of such facts he is in the same position as any other officer authorized by law to administer oaths; hence, he may accept and retain the absentee ballots until such time as is prescribed by law for the opening and counting of the same.

Respectfully submitted,

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APPROVED:

ROY MCKITTRICK,
Attorney General

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