

ELECTIONS:

Absentee ballots may be voted in a special election to be held May 15; persons who will be out of the State of Missouri may vote absentee ballots providing they are marked before officers who are authorized to administer oaths in the State of Missouri.

4-11  
April 10, 1934



Honorable W. M. Morris  
Clerk of County Court  
Grundy County  
Trenton, Missouri

Dear Mr. Morris:

This is to acknowledge your request for an opinion on the following questions:

1. May absentee ballots be voted in the special bond election to be held May 15, 1934?
2. Is a voter who will be absent from the State of Missouri on election day entitled to vote an absentee ballot?

Laws of Missouri 1933-34 extra session, page 174, provides for the following:

"At the general election to be held on the Tuesday next following the first Monday in November, 1934, or at a special election to be called by the Governor, in his discretion, prior to such general election, there shall be submitted to the electors of this State, for their approval or rejection, an amendment to the Constitution of the State of Missouri, adding to Article IV thereof, between Section 44c and Section 45, a new section to be known as Section 44d, to read as follows: "

This was a joint and concurrent Resolution, the purpose of same being to vote a Constitutional amendment of \$10,000,000.00 in bonds. The Governor by a proclamation has

set May 15, 1934 as the date for said election.

I.

In 1933 the Legislature at regular session repealed and amended the law regarding the casting of absentee ballots. Laws of 1933, page 218-225 inclusive, provides the method for casting ballots by persons absent from the county in which they are duly qualified voters, and Section 1 provides the following:

"That Sections 10181, 10182, 10183, 10184, 10185, 10186, 10187 and 10188, of Chapter 61, Revised Statutes of Missouri, 1929, relating to 'elections,' be, and the same are hereby repealed and twelve new sections relating to the same subject are hereby enacted in lieu thereof, to be known as Sections 10181, 10182, 10183, 10184, 10185, 10186, 10187, 10188, 10188a, 10188b, 10188c and 10188d, and to read as follows: "

Section 10181 of the above Act reads:

"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 noted that the above section provides that in order for one to vote an absentee ballot that

1. He must be a qualified elector of the State of Missouri,
2. Absent from the county on the day of holding the election, and

3. That it must be a special, general or primary election.

As stated above this is a special election called by the Governor, the purpose of it being to bond the State of Missouri for \$10,000,000.00 by Constitutional amendment.

Section 10181 says the following:

"\*\* or at which questions of public policy are submitted, \* \* \* \* \*

We hold that the election to be held on May 15 will be a special election and is one at which questions of public policy are submitted, namely, that of bonding the State.

In answer to your first question it is our opinion that absentee ballots may be voted in the special bond election to be held May 15, 1934.

## II.

Section 10182 Laws Missouri 1933, provides the following:

"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."

Section 10183 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 will be absent from his county. Said section further provides that the officials

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 are to be used and voted at the election. We thus summarize the above provision:

1. That a person must be a qualified elector of the State of Missouri,

2. That he must be absent on election day from the county in which he is qualified to vote,

3. That not more than thirty nor less than five days prior to the date of such election he must, in person, apply to the county clerk or officer whose duty it is to furnish ballots for such election in his voting precinct for an official ballot,

4. That he must make an affidavit that he will among other things, be absent from the county on the day the election is held,

5. The election officials after the ballots have been printed must send same by registered mail to those applying and not possessing them.

Section 10184 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 being that he is entitled to vote and that he will be absent from his county of residence on the date of said election, and further,

"I further swear that I marked the inclosed ballot in secret, and that I have not voted and will not vote elsewhere, or otherwise than by this ballot at this election."

The officer that administers the oath likewise certifies to the above facts, namely, that the voter 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 envelope.

Section 10185 of the same Act provides in part the followings:

"\* \* \* 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."

From the above it is 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; however, if one marks his ballot before the day of election he must make an affidavit that he will not be in the county where he is entitled to vote on that day; thus he would be swearing to a fact he knew would exist, otherwise he would be violating Section 10188c which provides a penalty for making false affidavits.

April 10, 1934

Section 10188b, supra, bears out the contention one does not have to mark the ballot on the day of the election but may do so beforehand; also the fact that it must be in the hands of the issuing official not later than six o'clock of the day next succeeding the election.

Therefore it is our opinion that one could mark his ballot before the day of election and be out of the State on election day yet his vote could be counted. However, in order to mark the absentee ballot the person must mark same before an officer authorized to administer oaths in this state. Thus every ballot that is voted is in truth and in fact voted while the person is in the State of Missouri.

Section 10188d provides:

"This act shall be deemed to provide a method of voting by voters absent from their county on the day of election and is in addition to the method now provided by statute in cases where the voter is present in the county where such voter resides on the day of such election and to such extent is amendatory of and supplemental to existing statutes, not herein expressly repealed."

Yours very truly,

James L. Horn Bostel  
Assistant Attorney General,

APPROVED:

---

ROY McKITTRICK  
Attorney General.

JLH:LC