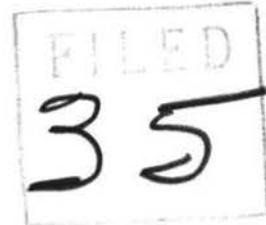


ELECTIONS:
ABSENTEE BALLOTS:
BALLOTS:
COUNTY CLERK:
DEPUTY COUNTY CLERK:

County clerk has authority to appoint
deputy county clerk to issue absentee
ballots only at county clerk's office
at county seat.

February 8, 1938

Hon. G. Derk Green
Prosecuting Attorney
Linn County
Linneus, Missouri



Dear Sir:

This department is in receipt of your letter of
January 22, 1938, in which you request an opinion as
follows:

"The County Clerk of this county recently received a communication from one of the labor organizations requesting that deputy County Clerks be appointed in Marceline and Brookfield for the purpose of receiving applications for absentee ballots and accepting the ballots after they have been voted. The purpose of this being to permit railroad employees to vote with the deputy County Clerk and avoid the necessity of making application in person at the Linneus office or by mail, and to avoid the necessity of returning the ballots to the Linneus office in person or by registered mail. The County Clerk suggested to me that he did not know that the law regarding absentee ballots permitted him to appoint deputy County Clerks in this manner.

"He would like an opinion from your office regarding the authority to make appointments for this purpose and also a ruling concerning the furnishing of seals of office to such deputy clerks, if they can be appointed, and their authority to take applications, issue absentee ballots, and accepting the filing of them after having been voted."

Article VIII, Section 9 of the Constitution is 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."

Pursuant to this constitutional provision, the legislature enacted Section 10181, R.S. Missouri, 1929, as amended in Laws of 1933, page 219, which is 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."

And also Section 10182, R.S. Missouri, 1929, Laws of 1935, page 264, which is 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, or by mail, to the county clerk or, where existing, to the board of 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."

We direct your attention to that part of Section 10182, supra, which we have underlined. It will be noticed it mentions "the county clerk" or "other officer charged with the duty of furnishing ballots for such election in his voting precinct".

Section 10299, R.S. Missouri, 1929, charges the county clerk with the duty of furnishing ballots and is as follows:

"Except as in this article otherwise provided, it shall be the duty of the clerk of the county court of each county to provide printed ballots for every election for public officers in which the electors or any of the electors within his county participate, and to cause to be printed in the appropriate ballot the name of every candidate whose name has been certified to or filed with him in the manner provided for in this article. Ballots other than those printed by the respective clerks of the county courts according to the provisions of this article shall not be cast or counted in any election."

The exception referred to in this section applies in counties where there is a board of election commissioners. (Sections 10302 and 10303, R.S. Missouri, 1929). Thus in Linn County, which we will assume has no board of election commissioners, the county clerk is the person to whom the application for an absentee ballot should be made. The statute mentions the clerk specifically, and he is also the officer charged with the duty of furnishing ballots for the election in the precinct in which the voter desires to cast his absentee vote.

The above statute, in referring to the official duties of the clerk in respect to absentee ballots, refers to the clerk alone. Section 11680, R.S. Missouri, 1929, provides the clerk of the county court with deputies, and is as follows:

"Every clerk may appoint one or more deputies, to be approved by the judge or judges, or a majority of them in vacation, or by the court, who shall be at least seventeen years of age and have all other qualifications of their principals and take the like oath, and may in the name of their principals perform the duties of clerk; but all clerks and their sureties shall be responsible for the conduct of their deputies."

In Springer v. McSpadden, 49 Mo., l.c. 300, the court in commenting on the effect of what is now Section 11680, supra, said:

"The law, in prescribing the duties of clerks, invariably designates the clerk alone, yet the functions of his office may always be performed by deputy duly appointed.
* * * * *

"The deputy has no authority to act in his own name, but when he performs an official act in the name of the principal, it is the act of the principal himself."

Thus, it appears that a deputy county clerk may act for his principal, the clerk, in issuing the official absentee ballots. However, this does not mean that this duty of the clerk may be performed at another place other than the office of the county clerk at the county seat.

Section 11674, R.S. Missouri, 1929, provides where the county clerk shall transact his official business, and is as follows:

"Each clerk shall keep his office at such places as the court shall direct, not to be more than two hundred yards from the courthouse or permanent place of holding the court of which he is clerk, and shall there

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keep the records, papers seal and property belonging to his office and transact his official business."

Summing up the foregoing, we see that the issuing of official absentee ballots is a part of the official duties and business of the county court clerk. This duty may be performed by the deputy clerk, but said deputy, when so acting, acts in the name of his principal, and such act is the act of the principal himself. The act must be performed at the county seat, as provided in Section 11674, supra, where all the official business of the county clerk must be transacted.

CONCLUSION

Therefore, it is the opinion of this department that the issuing of official absentee ballots is a part of the official business of the county court clerk which must be performed at his office at the county seat. That the clerk may not appoint deputies who will have offices at another place other than the county seat, and authorize those deputies to issue official absentee ballots at that place on his behalf.

Respectfully submitted,

TYRE W. BURTON
Assistant Attorney General

APPROVED By:

J.E. TAYLOR
(Acting) Attorney General

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