

ELECTIONS: If a person in the armed services of the United
ABSENTEE States applies only for a primary election ballot,
BALLOTS: he would not automatically be entitled to have a
general election ballot forwarded to him without
a new application therefor.

August 15, 1944



Mr. C. W. Detjen, Counsel
Board of Election Commissioners
St. Louis County
511 Locust Street
St. Louis (1), Missouri

Dear Sir:

This is a further acknowledgment of and reply to your
letter of June 23, 1944, in which you state:

"I am attorney for the St. Louis County
Election Board, having been appointed under
the provisions of Section 11908, R. S. Mo.
1939.

"The question has been raised before the
Board, whether applications being now re-
ceived from persons in the military service,
for primary ballots, are to be retained by
the Board and used for mailing out ballots
for the general election in November, in
those cases where persons applying for pri-
mary ballots, should fail to formally re-
apply before November. In other words, if
a person in military service applies for a
primary ballot, will he automatically be en-
titled to have a general election ballot for-
warded to him without a new application there-
for? This being a question that might be of
State-wide interest, the Board felt that we
should follow your opinion in the matter, so
that St. Louis County will be acting in uni-
formity with other political sub-divisions
in this connection. Will you please let us
have your opinion on this subject at your
earliest convenience?

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"At the Board meeting this morning, one member said he understood that your office had rendered an opinion heretofore, to the effect that persons residing in the State one year and in the County sixty days before the election next November, will be entitled to register and vote at the August primary, even though they might not have resided within the State and County the required length of time before the primary. If you have issued any opinion on this subject, the Board would like to have a copy and I shall appreciate your sending me one."

It is observed from the files of this department that a reply to the second paragraph of your letter was written on July 7, 1944. Therefore, that subject matter will not be further discussed here.

The first paragraph of your letter asks for an interpretation of the Soldiers' Absentee Voting Laws passed by the 62nd General Assembly of Missouri in Extraordinary Session in 1944. These laws consist of six different acts. However, only Senate Bill No. 6, providing for voting absentee ballots by members of the military or naval forces, etc., is pertinent to the question you submit.

Your question is "whether applications being now received from persons in the military service, for primary ballots, are to be retained by the Board and used for mailing out ballots for the general election in November, in those cases where persons applying for primary ballots, should fail to formally re-apply before November. In other words, if a person in military service applies for a primary ballot, will he automatically be entitled to have a general election ballot forwarded to him without a new application therefor?"

Section 2 of the act titled Senate Bill No. 6 is as follows:

"For the purpose of making application for an absentee war ballot to be voted in a general or special election by such absent voter as mentioned in this Act, the application by post card, which is provided for under the

'War Ballot Act' of the 77th Congress, Public Law 712, H. R. 7413, or any written request, telegram, cablegram or radiogram wherein are stated his name, voting address and the address to which the ballot desired by him is to be sent, shall be received and taken by the Clerk of the County Court or Board of Election Commissioners as an application to vote the absentee ballot provided for under this Act. For the purpose of making application for an absentee war ballot to be voted in a primary election by such absent voter, the applicant by any written request, telegram, cablegram or radiogram may make request to the Clerk of the County Court or Board of Election Commissioners of the County or City of his legal residence at the time of his induction into the armed forces, stating in his communication his name, voting address, and the military station, military post office or military address of his present station to which the ballot desired by him is to be sent. Any application received by the Secretary of State shall be deemed to be an application to the county clerks or boards of election commissioners of the various counties or election districts where the elector has his place of residence; and the Secretary of State, immediately upon receipt of such applications, shall send the same by first class mail to such county clerks or boards of election commissioners, who shall handle such applications as made to the Secretary of State in the same manner as though such applications had been made to such clerks or boards.

"Application for an official war ballot for any elector in the armed services of the United States, to be cast in any election, may be made in writing to the county clerk or to the board of election commissioners in the county or city in which the absentee elector was a legal resident at the time of induction into military or naval service, by the father, mother, spouse or next of kin of such person. In such case the applicant shall state under oath relationship between the person applying

for ballot and the absentee elector and the military or naval status of the person in the armed service, insofar as is known, for whom application is being made, his legal residence at the time of induction and his address to which the ballot is to be mailed. The applicant shall request the county clerk or the board of election commissioners to mail the ballot to the absentee elector."

Let us first consider the last paragraph of Section 2 in order to better arrive at what seems to be the real intent and purpose of the Legislature: This paragraph of Section 2 sets forth the officials to whom an application shall be made for a ballot for any elector in the armed services of the United States, the persons who may make the application for the elector, what facts shall be stated in the application, and the procedure to be followed to deliver the ballot to the absentee elector, but nowhere in this section, or elsewhere in the act, is any time whatever fixed when the application shall be made. The act is silent as to the time of making the application.

Now, looking at the first paragraph of Section 2, we find that there are two applications provided for: First, an application for an absentee war ballot for a general or special election, and, second, an application for an absentee war ballot for a primary election.

The apparent intention of the Legislature to require two applications, as set forth in the first paragraph of Section 2, is not changed by the permission given in the second paragraph of said section for such application to be made by a member of the family of the service man or service woman in the United States Army or Navy. On the contrary, it is confirmed in the first part of the second paragraph, where it speaks of a ballot to be cast in any election.

The requirement for an application to be made separately for the primary and general elections would seem to be based on sound reason and to make it as nearly certain as possible that the service man or woman would receive a ballot in time to vote. The service men and women are frequently being moved. Their

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addresses change suddenly and to distant places. The officials charged with sending them the ballots would be at a great effort and useless work if they are not kept advised of the addresses of the service men and women. It is apparent that this was a cogent reason why the Legislature provided for two applications to be made, one for the primary election ballot, and one for the general election ballot.

Many of the ballots which would be sent out for use in the general election, if only one application were required and made for a primary election ballot, would never reach the service man or woman because of a change in address of the elector before time to send out the general election war ballot, and unless a separate and second application be made therefor after the primary election, the purpose of the act would be defeated.

CONCLUSION

It is, therefore, the opinion of this department that if a person in the armed services of the United States applies only for a primary election ballot, neither he nor she would automatically be entitled to have a general election ballot forwarded to him or her without a new application therefor.

Respectfully submitted

GEORGE W. CROWLEY
Assistant Attorney General

APPROVED:

ROY McKITTRICK
Attorney General

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