

ELECTIONS: Qualified elector expecting to be absent  
ABSENTEE BALLOTS: from his county, or prevented because of  
APPLICATION: HOW MADE: illness or physical disability from  
voting in regular way at home precinct  
on election day, may apply to county clerk  
or other officer required to furnish ballots, for absentee ballot  
within time and manner provided by Sections 112.020 and 112.030,  
RSMo 1949. Application can be made personally by elector, or by  
written application sent first class mail, but application can-  
not be made or sent by elector's agent.

FILED  
40

June 27, 1956

Honorable Forrest L. Hill  
Prosecuting Attorney  
Howard County  
Fayette, Missouri

Dear Sir:

This department is in receipt of your recent request for a legal opinion, reading as follows:

"According to Section 112.020 RSMo. 1949, applications for absentee ballots are to be made in person or by mail. May a person other than the one completing the application take it in person to the county clerk."

This right of qualified voters to vote absentee ballots is not a vested right in the strictest sense, but is one guaranteed by Section 6, Art. VII, Constitution of Missouri 1945, which reads as follows:

"Qualified electors of the state who are absent, whether within or without the state, may be enabled by general law to vote at all elections by the people."

The right to vote an absentee ballot is a special privilege and can be exercised only in accordance with the constitutional and statutory provisions applicable thereto. The above quoted constitutional provision empowers the Legislature to enact laws regulating the rights of qualified voters to vote absentee ballots.

The General Assembly has seen fit to implement the above quoted constitutional provision and has enacted Chapter 112, RSMo 1949, on absentee voting.

Honorable Forrest L. Hill

Section 112.010, RSMo 1949, provides what citizens are qualified to vote absentee ballots and reads as follows:

"Any person being a duly qualified elector of the state of Missouri, other than a person in military or naval service, who expects 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, or any person who through illness or physical disability expects to be prevented from personally going to the polls to vote on election day, may vote at such election as herein provided."

Sections 112.020 and 112.030, RSMo 1949, specifies the procedure that shall be followed by one in making application for an absentee ballot. Section 112.020 reads 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, or expecting to be prevented through illness or physical disability from personally going to the polls to vote on election day, and shall attach to his application a certificate of illness or disability attested to by a licensed physician or duly accredited practitioner of Christian Science may, within thirty days next before the date of such election and up to six o'clock p.m. on the day before any 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.

Honorable Forrest L. Hill

In the event the elector shall have recovered from his illness or physical disability sufficiently to permit him to present himself at the proper polling place for the purpose of casting his ballot, or in the event such elector shall be in the county of his residence on election day, the absentee ballot cast by such elector shall be void, and such elector shall notify the county clerk of the removal of such disability before six o'clock p.m. on the day following the day of election."

Section 112.030 reads in part as follows:

"Application for such ballot may be made on a blank to be furnished by the county clerk or the board of election commissioners or other officer or officers charged with the duty of furnishing ballots as aforesaid, or may be made in writing by first class mail addressed to such officer or board signed by the said applicant. Immediately upon receipt of such application within the time and in the manner provided, the county clerk of the county, or the board of election commissioners, if any, or other official charged with the duty of furnishing ballots to such applicants, shall make a list of the names of such absent voters whose applications for ballots have been received, and shall cause such list to be immediately posted in a conspicuous place accessible to the public at the entrance of the office of such officer or officers which list shall show also the post office address, street address, ward or precinct number given by such applicant. \* \* \* \* \* provided, that no county clerk, board of election commissioners or other proper official charged with the duty of furnishing such ballots after examination of the records, or otherwise ascertaining the right of such person to vote at such

Honorable Forrest L. Hill

election shall be required to furnish any ballot or ballots to any person desiring to vote who is not lawfully entitled to vote, and if the applicant for ballot or ballots is entitled to receive same, the county clerk or the board of election commissioners, if any, or other official charged with the duty of furnishing such ballots immediately upon receipt of the printed ballot shall send 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 said election to such applicant. The official charged by law with printing and supplying ballots under the general election laws of this state, shall, at least thirty days before any election at which absentee ballots may be used, cause to be printed and supplied a sufficient number of ballots to be designated as 'official absentee ballots' to be furnished such absentee voters."

We note that the last above quoted sections do not define the terms "in person" or "by mail," and there is no indication it was the legislative intent these terms were to be given any technical or special meaning or any other than their plain or ordinary meaning, hence, it is assumed that the latter meaning was intended. We are unable to find any Missouri court decisions in which said terms have been defined, but we do find the Texas case of Rogers v. Moore, 97 S.W. 685, in which the words "in person" and "by mail" were construed as they appear in the Revised Statutes of Texas of 1895, as amended by the Act of 1903, Law, Regular Session. Said laws pertain to the levying of executions by officers and the notices required to be given the defendants and their attorneys.

It is believed that the terms "in person" and "by mail," as used in the Texas statute and discussed by the court are used in their plain or ordinary meaning and that the explanation given of said terms is very helpful in construing such terms as used in Sections 112.020 and 112.030, supra. At l.c. 685, the court said:

"In 1895 the statute was amended so as to require further notice to be given 'by delivering to the defendant in execution'

Honorable Forrest L. Hill

a copy of that which was to be posted. By the act of 1903, before referred to, the manner of giving notice was charged so as to provide for the publication thereof in a newspaper, and the further requirement was added that the officer 'shall give the defendant or his attorney written notice of such sale either in person or by mail.' This gives to the officer the choice of two methods, one in person and the other by mail, and notice by mail is given by mailing the paper. To hold that the officer must see that the defendant in the writ actually receives the notice would be equivalent to holding that he must give personal notice."

The absentee voting law is, in a sense, a special one in that it is supplemental to the election laws pertaining to voting generally. The former provides a method by which a qualified elector as referred to in Section 112,010, supra, expecting to be absent from his county, or who is prevented by illness or physical disability from going to the polls and voting on election day, may vote on absentee ballot. In order to cast his absentee ballot, the elector must apply and then vote in the manner and within the time provided by the statutes. Such law has been in effect in one form or another for many years.

The absent voters law, Laws of 1913, page 323, had some of the characteristics of the absentee voters law particularly in that the former provided a method by which an absent elector could vote even though absent from his voting precinct on election day. Under provisions of that law, the voter could apply at any precinct within the State on election day for an absentee ballot, and have such ballot counted at his home precinct. He was required to make the prescribed affidavit, with the names of the election judges on the back. Failure to comply with the law in making the application and voting, especially regarding the affidavit and names of the judges written on the back, were sufficient grounds for the ballot not to be counted.

In the case of *Straughan v. Meyers*, 266 Mo. 589, the absentee voters law of 1913 was held not to be a special law within the meaning of the constitution and was therefore constitutional.

The court discussed the characteristics of the law including the purpose for which it was enacted, and held that the provisions

Honorable Forrest L. Hill

making certain requirements of the elector when applying for a ballot were mandatory. At l.c. 592 the court said:

"Let us now consider the requirements and character of the act under review. In the first place, it was enacted to provide the means and machinery through which a certain class of citizens might enjoy a privilege which, under the general laws, could not be exercised. Its beneficiaries are of one class and specially favored, and they vote under conditions altogether different to others. The act itself declares (Sec. 1) that they can avail themselves thereof only upon the conditions and under the regulations specified. As early as *Smith v. Haworth*, 53 Mo., l.c. 89, this court said:

"It is a very salutary rule, long sanctioned by reason, experience and authority, that special laws, that give origin to new and unexpected departures from general rules, should be closely scrutinized, and the powers therein conferred strictly construed."

\* \* \* \* \*

"It has been urged against this act that it is vicious and dangerous, because capable of being made an instrument of fraud, and, therefore, a means of defeating the public will. In the absence of proper safeguards we can conceive of such consequences, but when the provisions of the act are strictly complied with we think they afford a fairly sufficient shield against this. These safeguards should, however, not be destroyed by construction, but should be carefully preserved, in order to give life, force and beneficent effect to the act. The affidavit of the voter and the names of the judges where the ballot is procured are essential to guard against fraud and to properly identify the ballot and voter, as well as to warrant the county court or election board in acting thereon. Unlike the requirement of the general election law that the ballot contain the initials, the object of these requirements is to guard

Honorable Forrest L. Hill

against the procuring and counting of illegal ballots, rather than against fraud while the election is actually in progress. It is our opinion that before a voter can avail himself of this special privilege it is incumbent upon him to see that these provisions are complied with, and that failing to so do his ballot should not be counted. These provisions relating to the duties of the authorized election officers after the receipt of a properly prepared ballot should be construed as were the provisions of the general election laws in the cases heretofore cited."

In view of the foregoing, it is our thought that in Sections 112.020 and 112.030, supra, the Legislature has seen fit to provide only two methods by which a qualified voter expecting to be absent from his county, or who is prevented from illness or physical disability from going to the polls at his home precinct and voting on election day, may apply for an absentee ballot, and each method is optional with the voter.

1) He may personally appear before the county clerk or other proper official charged by law with the duty of furnishing ballots, and make his application, and may be furnished a blank upon which to make such application. In contemplation of the statutes, "in person" means, the person of the elector only, and he is unauthorized to have another person appear for and in his behalf to make the application.

2) The elector may send his application for an absentee ballot to the county clerk or other official charged by law with the duty of furnishing ballots, by first class mail.

It is believed that the exact form of the application thus mailed is immaterial. An informal letter addressed to the proper official containing a request for an absentee ballot, the applicant's name and address, and sufficient information to satisfy the officer that the applicant is a qualified voter and entitled to vote an absentee ballot, would be sufficient. However, since the statute provides the written application is to be mailed, we do not believe the application could be sent to the county clerk or other official by any other means, such as by the hand of the applicant's agent.

To hold that the completed application could be delivered to the county clerk by someone other than the applicant would unnecessarily open the door to fraud by affording great opportunities

Honorable Forrest L. Hill

for changing the application in accordance with the will of the messenger or others, and without the knowledge or consent of the applicant. Apparently, it was for the purpose of obviating such occurrences that the lawmakers enacted the statutes providing that the application for absentee ballot was to be made in person or by first class mail.

#### CONCLUSION

It is therefore the opinion of this department that when a qualified elector expects to be absent from his county on election day, or expects to be prevented, because of illness or physical disability from going to the polls and voting at his home precinct on election day, he may make application to the county clerk, or other official charged by law with the duty of furnishing ballots, for an absentee ballot, within the time and manner provided by Sections 112.020 and 112.030, RSMo 1949. Said application can be made personally by the elector, or he may make written application by first class mail, but cannot make or send in such application by an agent.

The foregoing opinion, which I hereby approve, was written by my Assistant, Paul N. Chitwood.

Yours very truly

John M. Dalton  
Attorney General

PNC:ma:gm