

ELECTIONS: County Clerk cannot require application
BALLOTS: for absentee ballot to be sworn to.
ABSENTEE BALLOTS:
COUNTY CLERK:
AFFIDAVITS:

OPINION NO. 327

October 13, 1964



Honorable Virgil Conkling
Prosecuting Attorney
Wayne County
Piedmont, Missouri

Dear Mr. Conkling:

Your letter of September 18, 1964, requests an opinion concerning applications for absentee ballots.

Your letter, in part, states:

"Section 112.030, Revised Statutes of Missouri, 1961, charges the County Clerk with the task of ascertaining the right of each applicant to vote at such election, by 'examination of the records, or otherwise'. In the absence of permanent registration there was no election records, as such, to examine."

You ask if the county clerk is authorized to require applications for absentee ballots to be verified. Section 112.020, RSMo 1959, provides:

"Application for ballot made in person or by mail.--Any elector as defined in the foregoing section expecting to be absent from the county of his residence on the day of the election, or expecting to be prevented through illness or physical disability from personally going to the polls to vote on election day, within thirty days next before the date

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of the election and up to six o'clock p.m. on the day before any election, may 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 the election in his voting precinct, for an official ballot for the precinct to be voted at the election. In the event the elector recovers 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 the elector, having expected to be absent, is in the county of his residence on election day, the absentee ballot cast by the elector shall be void, and the elector shall notify the county clerk of the removal of the disability before six o'clock p.m. on the day following the day of election."

It will be noted that an elector may make application either in person or by mail, and that the application should contain a statement concerning his expected absence from the county or the facts relative to his illness. There is no requirement that the statement be verified.

Section 112.030, RSMo, (Cum. Supp. 1963) requires that the application may be made on a blank furnished by the county clerk or in writing sent by first-class mail. It provides further that the county clerk shall furnish the elector with the ballot after ascertaining his right to vote and that the county clerk shall not furnish the ballot to anyone not lawfully entitled to vote.

Again, there is no requirement that the written application shall be verified or if he applies in person that he be questioned under oath. No precise method is outlined as to how the determination shall be made concerning his right to vote other than "examining the records".

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This means that the county clerk should make any investigation that he deems necessary and should not furnish the elector with the absentee ballot if the clerk determines that the applicant is not "lawfully entitled to vote".

Under Section 11472, RSMo 1939, the applicant for an absentee ballot was required to sign an affidavit, verifying the facts in his application.

The repeal by the Legislature of this requirement evidences an unmistakable intent by the Legislature to eliminate the requirement that the application for an absentee ballot must be verified by affidavit of the applicant.

Under Section 112.050 no charge can be made for the acknowledgment of affidavits prescribed in Chapter 112, RSMo. Therefore, if the county clerk or election board could make a rule requiring an affidavit, a charge could be made by the notary public for the affidavit which is not "prescribed" in such chapter. This obviously would be contrary to the intent of this chapter - that no charge for affidavits should be made. This is a further reason indicative of the legislative intent to eliminate the affidavit.

If the elimination of this affidavit from the application seems to indicate a relaxation of precautionary measures, we wish to point out that Section 112.040, RSMo 1959, requires that the absentee voter return the ballot in an official envelope containing an affidavit wherein the elector swears that he is lawfully entitled to vote, the reason why he cannot vote on election day and other pertinent facts concerning his eligibility to vote.

Section 112.040, RSMo 1959, provides:

"Official to initial ballots and enclose in envelopes for transmission to voter--- form of envelope---official's affidavit.--- It shall be the duty of the county clerk or board of election commissioners or other officer or officers as aforesaid to write upon such ballot or ballots his or

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their initials, and enclose such ballot or ballots in an envelope unsealed to be furnished by such clerk or other proper officials; which envelope shall bear the name, official title and post office address of such officer or officers, and upon the other side a printed affidavit in substantially the following form:

"State of)
"County of) ss.

"I, do solemnly swear that I am a resident of the precinct of the town or city of or/of the ward in the town or city of, residing at, in said town or city in the county of and state of Missouri, or/that I am a resident of the precinct of township in the county of and state of Missouri, and not living in a town or city, that I have been a resident of such ward or precinct for months last past; that I am lawfully entitled to vote in such ward or precinct at the election to be held on; that on account of
(Absence from the county of my residence, illness or physical disability)
I expect to be prevented from going to the polls to vote on such election day.

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

.....

"Subscribed and sworn to before me, an officer duly authorized under the laws of this state to administer oaths, this day of A.D.

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and I hereby certify that the affiant has exhibited the enclosed ballot to me unmarked, and that he then in my presence, and in the presence of no other person and such manner that I could not see his vote, marked such ballot and enclosed and sealed same in this envelope without my seeing or knowing his vote, and that the affiant was not solicited or advised by me to vote for or against any candidate or proposition.

.....
"(Official capacity)"

If the elector falsely swears to this affidavit, he may be prosecuted under Section 112.110 for the commission of a felony.

CONCLUSION

It is the opinion of this office that an elector may apply for an absentee ballot, either by mail or in person, that the county clerk is not authorized to require the application to be verified by affidavit of the applicant, that it is the duty of the county clerk to ascertain if the elector is legally entitled to vote by such means as are reasonable and necessary, and that if the elector falsifies the required official affidavit on the envelope containing his ballot, he may be prosecuted as provided by Section 112.110, RSMo 1959.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, O. Hampton Stevens.

Yours very truly,

Thomas F. Eagleton
THOMAS F. EAGLETON
Attorney General