

ELECTIONS:
ABSENTEE BALLOTS:
VOTING:
NOTARY PUBLIC:

1. When absentee ballots are sent by mail, they must be directed to the voter and sent by Certified Mail with return receipt and addressed to the voter at the place where he is actually residing.
2. Absentee ballots must be voted in the presence of the notary public or other officer and deposited and sealed in the envelope and the notary must place his signature and title on the envelope.

OPINION NO. 356

December 7, 1964

Honorable Frank C. Ellis
State Representative
Bollinger County
Sedgewickville, Missouri



Dear Mr. Ellis:

This is in response to your request dated October 14, 1964, for an opinion relating to absentee voting. Your first question is stated in the following language:

"In Bollinger County they are mailing out ballots in care of individuals who live in some other state or city. There has been as high as five ballots mailed to one person to sign for the Registered Ballots through mail. Can a person receive more than one ballot through mail even if they are for someone else?"

Your question relates to the procedure which should be used by county clerks and boards of election commissioners in mailing absentee ballots to voters. Section 112.030, RSMo Cum. Supp. 1963, contains the following language relating to this particular subject:

"* * * and if the applicant for ballot * * * is entitled to receive same, the county clerk or the board of election commissioners * * * immediately * * * shall send in a separate envelope addressed to each absentee voter and by certified mail with return receipt or deliver in person an official ballot * * * to any applicant applying in person at the office of the county clerk or the board of election commissioners. * * *"

This statute makes it clear that only one of two alternative methods may be used by the county clerk or board of election commissioners to deliver absentee ballots to a voter.

The first alternative is by mail; the second alternative is delivery in person to the voter in the office of the county clerk.

This language shows a clear intent by the Legislature to see that absentee ballots are delivered directly to the voter at the place where the voter either permanently or temporarily resides. This, we believe, would not prohibit the mailing of ballots "in care of" another in some limited circumstances. For example, if the voter were residing in a hotel, hospital, nursing home, or some other similar institution, or were living either temporarily or permanently with a friend or relative, then we think it would be appropriate to send the ballot "in care of" such institution, friend, or relative.

It has been brought to our attention, however, that some County Clerks have been requested to send absentee ballots "in care of" a political headquarters, or "in care of" a candidate, or "in care of" an individual (e.g. a campaign manager) who is active in a political campaign. This we deem contrary to the intent of the Legislature.

County Clerks and Boards of Election Commissioners should exercise reasonable diligence and caution to mail absentee ballots directly to the voter and by certified mail with return receipt. The ballot should be addressed to the absentee voter at the place where he is either temporarily or permanently residing. It should not be sent to another person who will be called upon to deliver the ballot to the absentee voter and thus make such intermediary an agent for the purpose of delivering the ballot to the voter. (This does not mean that officials or employees of an institution or relatives or friends of the voter at the place where the voter actually is residing may not sign the postal return receipt.)

The use of absentee ballots has always been a source of irritation and dispute. We believe that it was the intent of the Legislature to minimize the possibility of fraud. To do this, every effort should be made to see that the absentee ballot when delivered by mail goes as directly as possible to the voter.

Your second question is stated in the following language:

"I would also like to know if it is legal for a -- candidate to have a person to vote a ballot and then take it and have the ballot notarized later?"

Your question, as we understand it, is whether an absentee ballot is valid if it is not marked and sworn to in the presence of the notary public or other officer authorized by law to administer an oath.

Section 112.050, RSMo 1959, provides as follows:

"The absent voter shall make and subscribe to the affidavits provided for on the return envelope for the ballot before any officer authorized by law to administer oaths; and the voter shall exhibit the ballot to the officer unmarked, and shall thereupon in the presence of the officer and of no other person mark the ballot or ballots, but in such manner that the officer cannot see or know how it is marked. The ballot or ballots shall then in the presence of the officer be deposited in the envelope and the envelope securely sealed. The officer shall then write or print upon the envelope the following: 'Absentee ballot of (insert name of voter) marked and sealed in my presence', which certificate shall be signed by the officer and his official title noted thereon, * * *."

The foregoing statute plainly requires that the voter must mark the ballot in the presence of the notary public or other officer, and, then the ballot must be deposited in the envelope provided therefor and the envelope must be sealed and the notary public or officer must certify that the ballot was marked and sealed in his presence and the notary's or other officer's signature and official title must be written on the envelope.

Unless this statute is strictly complied with the affidavit is void and the ballot is likewise void. The Supreme Court of Missouri in Elliott v. Hogan, 315 SW2d 840, held that absentee voting statutes are mandatory and irregularities in absentee ballots render them illegal.

Therefore, the absentee ballot must be marked in the presence of the notary and the ballot must be put in the envelope in the presence of the notary and the envelope sealed.

The notary must then write on the envelope: "Absentee ballot of (insert name of voter) marked and sealed in my presence". Thereafter, the notary must sign his name and his official title on the envelope at the places provided therefor.

CONCLUSION

(1) It is the opinion of this office that when absentee ballots are sent by mail they must be directed to the voter and sent by certified mail with return receipt and addressed to the voter at the place where he is actually residing either temporarily or permanently.

(2) Absentee ballots must be voted in the presence of the notary public or other officer and deposited and sealed in the envelope provided therefor and the notary public must place his signature and official title on the envelope at the places provided therefor.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, J. Gordon Siddens.

Yours very truly,


THOMAS F. EAGLETON
Attorney General