

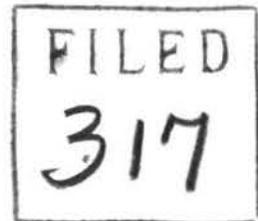
ELECTION LAWS:  
ABSENTEE VOTING:  
HOME REGISTRATION:  
BOARD OF ELECTION COMMISSIONERS,  
AUTHORITY REGARDING VOTER  
QUALIFICATIONS:

Regardless of a registering voter's answers to questions recorded in the files of the Kansas City election board which reveal information regarding disability or literacy, absentee ballots properly applied for under the provisions of Chapter 112 must be supplied

to the potential voter, and must be counted if properly cast.

OPINION NO. 317

July 16, 1968



Mr. Fred A. Murdock  
Chairman  
Board of Election Commissioners  
Kansas City, Missouri

Dear Mr. Murdock:

This opinion is in response to your inquiry regarding certain procedures of your Board in connection with absentee voting by persons properly registered, particularly those registered under the new home registration provisions of Section 117.290 (2), RSMo Cum. Supp. 1967. As you stated in your letter, your specific request is:

"If the voting and registration records maintained by this Board affirmatively disclose that a registered, duly qualified elector is unable to mark an absentee ballot without assistance due either to illiteracy or physical incapacity, should the Board honor such elector's request for issuance of an absentee ballot and, if so, should the Board permit such a ballot to be counted when cast?"

You further advise that your Board uses registration forms containing the following questions:

"Can you read and write?"

"Have you any disability preventing you from marking your ballot or operating a voting machine?"

"If so, what?"

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It seems to us that to answer your question fully, we need to inquire into what power and duties your Board possesses under the law regarding voter qualifications, registration and absentee ballot procedures.

Section 117.290 (2), RSMo Supp. 1967, reads:

"2. Upon receipt of written requests from applicants who are otherwise entitled to vote but who are physically incapacitated and unable to go to places of registration, the board shall send two registration officers to the homes of such applicants. The registration officers must be of opposite political parties. The validity of each request shall be determined by the board. The board may establish rules and regulations as it may deem necessary in order to give effect to this section."

General registration procedures for Kansas City are contained elsewhere in Chapter 117, RSMo. In particular, Section 117.300, RSMo 1959, enumerates the information which is to be requested from registration applicants. The questions you employ regarding alleged disability or literacy are not there listed.

Qualifications for voting are listed in the Constitution of Missouri, Article VIII, Section 2:

"All citizens of the United States, including occupants of soldiers' and sailors' homes, over the age of twenty-one who have resided in this state one year, and in the county, city or town sixty days next preceding the election at which they offer to vote, are entitled to vote at all elections by the people. Citizens of the United States who are otherwise qualified to vote under this section and who have resided in this state sixty days or more, but less than one year, prior to the date of a presidential election may be permitted by law to vote for presidential and vice presidential electors at such election but for no other officers. No idiot, no person who has a guardian of his or her estate or person and no person while kept in any poorhouse at public expense or while confined in any public prison shall be entitled to vote, and persons convicted of felony, or crime connected with the exercise of the right of suffrage may be excluded by law from voting.\* \* \*"

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Applicable to Kansas City is Section 117.040, RSMo 1959, which contains basically the same language and implements these constitutional qualifications.

In Section 112.030, RSMo Cum. Supp. 1967, regarding applications for absentee voting, we find the following language:

"\* \* \* \* 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 election shall be required to furnish any ballot or ballots to any person desiring to vote who is not lawfully entitled to vote,\* \* \*"  
(emphasis added)

We conclude that the Board's authority to establish registration procedures by which to rule on voter qualifications is limited to the qualifications set out in the Missouri Constitution and applicable statutes; neither literacy nor health is such a qualification.

Although your Board certainly has rule-making authority, we do not believe it has the power to withhold issuance of absentee ballots properly applied for. The Supreme Court of Kansas held regarding soldiers' absentee voting that the secretary of state's rule-making authority did not authorize him to fix voter qualifications (Johnson v. Russell, 1945, 160 Kan. 91, 159 P.2d 480).

We deem it unnecessary to determine whether the election board has the authority to promulgate rules requiring an individual to answer questions on the registration forms as to his literacy or a disability which allegedly might prevent his marking a ballot or operating a voting machine, because such information would not authorize the refusal of the board to send an absentee ballot to such individual if he properly applies for such ballot; nor would such information authorize the refusal of those counting absentee ballots to count the ballot of such individual, if the ballot was properly cast.

Section 112.040, RSMo 1959, requires the absentee voter to swear he has marked his absentee ballot "in secret". The actual technique of voting absentee ballots, as mentioned in your request to us, is set out in Section 112.050, RSMo 1959:

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"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 envelope shall be sent by mail by the voter, postage prepaid, to the officer issuing the ballot, and for the ballot to be effective and eligible to be counted the envelope containing it shall bear a postmark not later than the date of the election and shall be delivered to the issuing official not later than six o'clock p.m. of the day next succeeding the day of such election, or the ballot may be delivered in person to the issuing official, who shall give his written receipt therefor, not later than six o'clock p.m. of the date of the election. No charge shall be made by any officer in this state for the acknowledgement of affidavits prescribed in this chapter."

These sections clearly indicate that the intent of the statutes is that the marking of the ballot be the voter's own act. In a previous opinion to you, No. 500, 11/3/66, we held Chapter 112 to be mandatory in application, and that it requires strict following by the voter regarding application and completion of the balloting procedure. This office has also previously held that the notary public authenticating the ballot may not assist the voter in marking it (No. 96, White, 8/20/54, enclosed), but that it is proper to apply for an absentee ballot by means of an authenticated X-mark rather than a signature (Opinion to your Board, No. 151, 10/24/67).

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However, neither the mandatory statutes nor the common law provide that a voter be disenfranchised before the fact or prevented from even having the chance to attempt to vote, because of some alleged "disability" or illiteracy which does not legally disqualify him from voting. Quite the contrary, the above statutory provisions on registration and absentee voting in our judgment indicate strong legislative intent that the allegedly "disabled" or illiterate person be given every possible opportunity to cast his ballot, if otherwise a qualified voter. Certain irregularities, of course, may void an absentee ballot in a given election, but this is a matter to be settled by the appropriate election officials or in the courts where authorized by statute. An example of an election contest regarding absentee ballot irregularities is that involved in Elliot v. Hogan, Mo. App. 1958, 315 S.W. 2d 840.

#### CONCLUSION

It is the opinion of this office that regardless of a registering voter's answers to questions recorded in the files of the Kansas City election board which may reveal information regarding alleged disability or literacy, absentee ballots properly applied for under the provisions of Chapter 112 RSMo must be supplied to the potential voter, and must be counted if properly cast.

The foregoing opinion, which I hereby approve, was prepared by my assistant, William L. Culver.

Very truly yours,



NORMAN H. ANDERSON  
Attorney General

Enclosure: Op. No. 96-White-8/20/54