

ELECTIONS:
ABSENTEE VOTING:

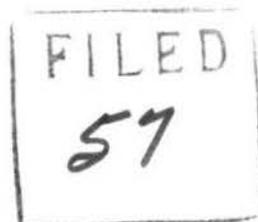
A county clerk is not authorized to deliver an absentee ballot in person at a place other than his office and

that the delivery of an absentee ballot in person at a place other than his office is a violation of the absentee voting laws of Missouri and constitutes a misdemeanor.

OPINION NO. 57

January 25, 1971

Honorable Samuel J. Short, Jr.
Prosecuting Attorney
Cedar County
Second Floor, Court House
Stockton, Missouri 65785



Dear Mr. Short:

This is in response to your request for an official opinion on the following questions relating to absentee voting:

"(1) May the County Clerk with or without being requested to do so deliver an Application for Absentee ballot and a ballot in person at a place other than his office?"

"(2) Then after he has delivered the Application and ballot in person may he legally witness the ballot of the person signing the application and voting the ballot and take it back to his office.

"(3) If the County Clerk does not have authority to deliver the Application and ballot in person and return it personally to his office, but does so then is he in violation under Section 112.110 of the Revised Statutes of Missouri 1969."

Section 112.020, RSMo 1969, provides that an application for an absentee ballot may be made by the voter in person or by mail to the election authority, which in this instance is the

Honorable Samuel J. Short, Jr.

county clerk. The two methods by which the ballots may be delivered are prescribed in Section 112.030(2), RSMo 1969 as follows:

"The election authority shall not furnish a ballot to any person who is not lawfully entitled to vote. If the applicant for a ballot is entitled to receive the ballot, the election authority shall send an official ballot in a separate envelope addressed to each absentee voter by certified mail with return receipt or shall deliver in person an official ballot to any applicant applying in person at the office of the election authority." (Emphasis added.)

It appears from the above quoted provision that it is the duty of the clerk to deliver absentee ballots. Accordingly, the performance of such duty must be regarded as a transaction of official business.

The legislature has directed that the place where the transaction of official business by the clerk is his office. Section 51.100 is as follows:

"Each clerk of the county court shall keep his office at such place or places as the county court shall direct, not more than two hundred yards from the courthouse or permanent place of holding court of which he is clerk, and there shall keep the records, papers, seal and property of his office and transact his official business."

Section 51.110 in certain instances authorizes the establishment of a branch county clerk's office ". . . where all the records and proceedings at such place shall be safely kept and preserved, and all acts done and performed at such place shall have the same force and effect as if done at the county seat".

It appears therefore, that delivery of absentee ballots in person is required to be made at a place where the clerk is authorized to transact official business, namely his office. Accordingly, the county clerk is not authorized to deliver an

Honorable Samuel J. Short, Jr.

absentee ballot in person at a place other than his office. The answers to your first two questions therefore must be in the negative.

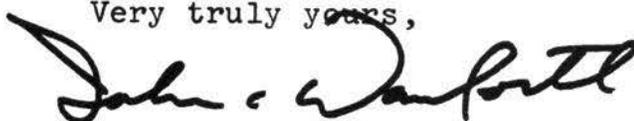
Your final question is whether a clerk who delivers an absentee ballot in person at a place other than his office is in violation of the absentee voting laws of Missouri. In the case of Elliott v. Hogan, 315 S.W.2d 840, the Supreme Court held that the absentee voting laws are mandatory. We are enclosing a copy of Opinion No. 500, issued November 3, 1966, to Honorable Fred Murdock, wherein this case is discussed and the view expressed that Chapter 112, RSMo on absentee voting is mandatory and limits absentee balloting to precise procedures spelled out in the statute. It is our view that the words of the statute providing that the clerk "shall deliver in person an official ballot to any applicant applying in person at the office" are mandatory and that delivery of the ballot in person outside of the clerk's office is a violation of Section 112.030(2) and constitutes a misdemeanor. Section 112.110 to which you refer in your opinion request provides that a violation of any of the provisions in the absentee voting law which includes Section 112.030(2) is a misdemeanor.

CONCLUSION

It is therefore, the opinion of this office that a county clerk is not authorized to deliver an absentee ballot in person at a place other than his office and that the delivery of an absentee ballot in person at a place other than his office is a violation of the absentee voting laws of Missouri and constitutes a misdemeanor.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, L. J. Gardner.

Very truly yours,



JOHN C. DANFORTH
Attorney General

Enclosure:

Op. No. 500
11-3-66, Murdock