

May 6, 1971

Answer by letter-Gardner

OPINION LETTER NO. 229



Honorable John W. Briscoe
Prosecuting Attorney
Knox County Courthouse
Edina, Missouri 63537

Dear Mr. Briscoe:

We have received your letter in which you ask whether a county clerk can and should mail absentee ballots to persons whose applications are received not later than 4 p.m. on the fourth day before the election when absentee ballots are not delivered to the county clerk until after such time.

Under Section 112.020, RSMo 1969, to which you refer, it is optional with the voter to apply for an absentee ballot either in person or by mail. Section 112.020, RSMo 1969, states that ". . . The application made in person shall be made not later than the four p.m. of the day before the election. The application made by mail shall be received not later than four p.m. on the fourth day before the election. . . ."

When voting by mail, Section 112.050, RSMo 1969, provides that after the marked ballot has been securely sealed in an envelope ". . . The envelope shall be sent by mail by the voter, postage prepaid, to the election authority. For the ballot to be eligible to be counted the envelope containing it shall be received by the election authority not later than four p.m. of the day before the election. . . ."

We agree with you, therefore, that an application made by mail must be received not later than 4 p.m. on the fourth day before the election.

This requirement has no application to the furnishing of a ballot by the clerk. The clerk has a ministerial duty to furnish

Honorable John W. Briscoe

absentee ballots which have been legally applied for as quickly as can reasonably be done. If the voter's ballot is not received until after 4 p.m. of the day preceding the election, such ballot is void and shall not be counted but this does not authorize the county clerk to decide that he will not mail out ballots in response to applications because he believes that the ballot cannot be returned by the voter before 4 p.m. of the day preceding the election. It is the duty of the county clerk to mail out absentee ballots as quickly as possible to those persons whose applications have been received before 4 p.m. of the fourth day before the election.

Yours very truly,

JOHN C. DANFORTH
Attorney General