

ELECTIONS:

BALLOTS:

ABSENTEE BALLOTS:

Persons who have resided in Missouri for thirty days or more but less than one year are eligible to vote in person or by absentee ballot for Presi-

dent and Vice President in this state without being registered. No person who has resided in Missouri for more than one year, and who is not registered to vote, except a person who has been absent from his home for such period of time that it has been substantially impossible for him to register to vote in person, is eligible to receive any ballot for the November 7, 1972, election, in those areas of Missouri in which registration is required, except that in areas with local option registration (Chapter 114, RSMo 1969), no person who has lived in Missouri more than one year and is not registered may receive a ballot. A person not registered who has resided more than one year in an area of Missouri in which registration is required (other than an area having local option registration) can receive an absentee ballot for President and Vice President only when he has been absent from his home for such period of time that it has been substantially impossible for him to register to vote in person.

OPINION NO. 289

November 3, 1972

Honorable Robert A. Young  
Missouri Senate, 24th District  
3500 Adie Road  
St. Ann, Missouri 63074



Dear Senator Young:

This official opinion is in response to your request for a ruling on the following question:

"Are students who are not registered but are otherwise qualified to vote entitled to receive a 'short ballot' enabling them to vote for President and Vice President only?"

The facts as they appear in your opinion are that certain students attending college have not registered at the place of registration where the college is located nor have they registered or received absentee ballots from their home town. The question is whether there is any means for them to receive the so-called short ballot.

While your request refers to students, this opinion is also applicable to other persons who are not students.

Honorable Robert A. Young

The first question arising from your request involves the place of residence of these students. In an opinion issued by this office in 1971, we concluded that a student eighteen years of age or older has the option of voting either from his original residence or from a residence established in the community where he attends school. The place of residence is determined by the student's declaration of intent and an examination of whether the facts regarding his residence are consistent with that declaration. See Opinion No. 387, to Honorable Charles S. Broomfield, September 3, 1971. Any conclusions herein dealing with eligibility to vote should therefore be read to apply to both possible residences.

The main problem in this opinion involves the availability of the short ballot to unregistered but otherwise qualified voters. The issuance of presidential ballots is governed by Sections 111.031 through 111.061, RSMo 1969 and Supp. 1971, and 42 U.S.C. §1973-aa-1. Each of these will be considered in turn.

I.

The Missouri statute governing the eligibility of Missouri residents for presidential ballots, Section 111.031(1), RSMo Supp. 1971, reads as follows:

"Any citizen of the United States who is otherwise qualified to vote under the constitution of this state and who has resided in this state thirty days or more but less than one year prior to the date of a presidential election may vote for presidential and vice-presidential electors at such election but for no other officers."

Section 111.041, RSMo 1969, provides that persons falling within its terms are not required to register. Thus, those persons who have changed their domicile to this state from another state in the past year but more than thirty days before the election can vote in person for President and Vice President by following the procedures set forth in Sections 111.031 through 111.061, RSMo 1969 and Supp. 1971, even though they are not registered.

These statutes, however, do not allow students who have resided in Missouri for more than one year to vote for President and Vice President. These students do not come within the statutes' literal terms, and the statutory scheme under Missouri law requires voting registration of all persons in certain cities and counties who have lived in Missouri for more than one year. Thus,

Honorable Robert A. Young

persons who are not registered but have lived in Missouri for more than one year may not vote at all under Missouri statutes, if they live in registration areas.

The opinion of the three-judge federal court in the case of Danforth v. Christian, Civil Action No. 1825 (W.D.Mo., 10/31/72), invalidating Missouri's one-year and sixty-day residency requirements, does not affect the availability of the short ballot to unregistered voters not coming within the terms of Section 111.031, RSMo Supp. 1971. That litigation involved solely the legality of durational requirements and did not challenge required registration. The holding in that case grants the right to vote for all purposes to all persons who have resided in Missouri more than thirty days in areas where registration is not required and grants to all persons who have resided in Missouri more than thirty days in areas in which registration is required the right to register and vote.

In summary, therefore, a short ballot will be made available under Missouri law to all persons who have changed their domicile to Missouri from another state within one year of the general elections and who have resided in this state thirty days or more. The short ballot will not be available under Missouri law to persons who will have resided in Missouri for more than one year by the date of the election.

## II.

The United States Congress enacted as part of the Voting Rights Act of 1970, a section dealing with residency requirements and absentee voting in presidential elections, P.L. 91-285, §6, 84 Stat. 316, which appears in 42 U.S.C. §1973aa-1. The purpose of this statute is twofold:

"(1) to completely abolish the durational residency requirement as a precondition to voting for President and Vice President, and (2) to establish nationwide, uniform standards relative to absentee registration and absentee balloting in presidential elections." Section 1973aa-1(b).

To carry out that purpose, Congress enacted sections creating rights for citizens and obligations upon the states regarding the conduct of presidential elections. Subsections (c), (d) and (f) are relevant to the question before us, and read as follows:

"(c) No citizens of the United States who is otherwise qualified to vote in any election

Honorable Robert A. Young

for President and Vice President shall be denied the right to vote for electors for President and Vice President, or for President and Vice President, in such election because of the failure of such citizen to comply with any durational residency requirement of such State or political subdivision; nor shall any citizen of the United States be denied the right to vote for electors for President and Vice President, or for President and Vice President, in such election because of the failure of such citizen to be physically present in such State or political subdivision at the time of such election, if such citizen shall have complied with the requirements prescribed by the law of such State or political subdivision providing for the casting of absentee ballots in such election.

"(d) For the purposes of this section, each State shall provide by law for the registration or other means of qualification of all duly qualified residents of such State who apply, not later than thirty days immediately prior to any presidential election, for registration or qualification to vote for the choice of electors for President and Vice President or for President and Vice President in such election; and each State shall provide by law for the casting of absentee ballots for the choice of electors for President and Vice President, or for President and Vice President, by all duly qualified residents of such State who may be absent from their election district or unit in such State on the day such election is held and who have applied therefor not later than seven days immediately prior to such election and have returned such ballots to the appropriate election official of such State not later than the time of closing of the polls in such State on the day of such election.

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"(f) No citizen of the United States who is otherwise qualified to vote by absentee ballot in any State or political subdivision in any election for President and Vice President

Honorable Robert A. Young

shall be denied the right to vote for the choice of electors for President and Vice President, or for President and Vice President, in such election because of any requirement of registration that does not include a provision for absentee registration."

The questions remaining in this opinion are whether this language requires Missouri to make short ballots available to (1) unregistered persons who have resided in Missouri less than one year but more than thirty days and who will be absent from their residences on election day, and (2) unregistered persons who have lived in Missouri more than one year, where the persons reside in areas that require registration.

In approaching any question of statutory construction such as the one presented here, several principles must be kept in mind. First, the cardinal rule is to interpret a statute in a way that agrees with the intent of the legislature, as shown both by the language of the statute and by other expressions of intent, such as legislative history. The literal language of the statute, of course, is the best evidence of the legislature's intent, but where that language is susceptible of more than one interpretation, other aids can be resorted to. Second, a statute should be interpreted as a whole, in such a way that the various sections support a single consistent principle, insofar as that is possible. Third, a statute should be interpreted in a way that does not reach an obviously absurd or unworkable result. Finally, a statute should be interpreted wherever possible so that it is constitutional and within the power of the legislature to enact.

1. The intent of Congress in passing this law was to protect the vote of citizens who travel interstate. Had Congress desired to make the short ballot available to all citizens of the United States without further qualification, it would have done so in a direct fashion. Congress chose, however, to allow the states to require voter registration so long as that registration does not discriminate against citizens who had lived in the state more than thirty days. (Subsection (e) of the statute gives citizens who move within thirty days of an election the right to cast an absentee ballot from the state from which they moved. See Section 111.031(2), RSMo Supp. 1971).

It is clear from a reading of the federal statute that persons who have lived in Missouri for more than thirty days could be required by Missouri to register before they are allowed to vote the so-called short ballot. Section 111.041, RSMo 1969, waives the registration requirement for persons who have lived in the state less than one year, the residency period required

Honorable Robert A. Young

by Missouri law until the opinion in Danforth v. Christian, supra. Persons who have lived in the state more than one year, however, are required under Missouri statutes to register (where registration is required) before they are eligible to cast any ballot. Insofar as they deal with in-person voting of the short ballot, it is the opinion of this office that the Missouri statutes are consistent with the intent and the language of the Voting Rights Act.

In a recent opinion dealing with this federal statute, this office ruled that the provisions requiring the states to provide for absentee voting of the short ballot are mandatory on Missouri election officials, even absent enabling legislation by the Missouri Legislature. Opinion No. 277, to John T. Wiley, October 16, 1972. That conclusion controls here as well. Any person who is eligible to vote a short ballot in person must be able to vote a short ballot absentee as well, if he will be absent from his residence or unable to vote in person on election day. The procedures to be employed should be substantially those provided for other voters in Chapter 112, RSMo, except that appropriate changes in the affidavits required may be made.

It could be argued that the failure of Missouri to provide statewide voter absentee registration further means that all citizens, regardless of registration and length of residence in the state, are eligible to vote an absentee short ballot, pursuant to subsection (f) of the federal statute. It is the opinion of this office, however, that such an interpretation of the federal statute is not in accordance with the intent of Congress, and is not the proper conclusion to be reached.

This office recently issued an opinion in which we concluded that subsection (f) required the St. Louis Board of Election Commissioners to send absentee short ballots to persons residing overseas who have not been able to register by mail, since the election statutes do not permit absentee registration in St. Louis. Opinion No. 277-1972, supra. The facts in that opinion show that the applicants had been absent from Missouri since 1964, and therefore, that the lack of an absentee registration provision effectively barred them from exercising their right to vote. We believe that only where a person is similarly aggrieved by the lack of an absentee registration provision can he claim the benefit of subsection (f) of the statute.

Section 1973aa-1 was added to the Voting Rights Act by a Senate amendment to the House Bill offered by Senator Goldwater of Arizona. Senator Goldwater, in introducing the amendment, had this to say about what he considered the coverage of subsection (f) to be:

Honorable Robert A. Young

"Accordingly, it seems entirely appropriate to ask that the same rule shall be applied on behalf of civilian citizens who are temporarily living away from their regular homes, whether they are visiting relative or friends abroad, attending college outside their own State, working for a U. S. firm overseas, or serving as Federal employees away from their normal homes." 116 Cong. Rec. 6992 (March 11 1970).

It is relevant to note that each of these examples involves a situation in which it would be extremely burdensome to require the applicant to return to his home town or county to register to vote in person. Thus it seems the intent of the law's author that a substantial and lengthy absence from the place of registration is necessary before an applicant can take advantage of subsection (f) and obtain an absentee ballot without registering to vote.

In summary, the intent of Congress is to allow all persons who have lived in a state more than thirty days to vote for President and Vice President provided that they comply with that state's registration requirements. The only exception to this general rule made by Congress is that, where no absentee registration is provided, persons who are unable to register in person may cast absentee ballots without registering.

2. The second consideration in interpreting a statute, regarding it as a whole, closely parallels the first. In looking at this law as a single unit, we find that when Congress guaranteed the availability of absentee voting, it intended to affirm, not revoke, state registration provisions, subject only to the single narrow exception. An interpretation of subsection (f) which would void all registration requirements where there is no provision for absentee registration could not be reconciled with the language of subsections (c) and (d), specifically allowing registration within thirty days of the date of the election.

If, on the other hand, subsection (f) is read as to waive registration requirements only for those residents of Missouri for more than one year who are unable to register because there is no absentee registration provision, and for no other persons, then subsections (c), (d) and (f) evidence a consistent scheme of allowing each state to require registration, so long as the method used does not conflict with the right of interstate travel.

3. A third rule of statutory construction requires reaching that interpretation which is most sensible and rational, when

Honorable Robert A. Young

more than one interpretation of the language is possible. This rule follows from the presumption that a legislature acts in a rational manner to eliminate a perceived evil.

If this statute is read to allow persons an absentee ballot, providing that they live in areas which do not provide absentee registration, we would reach the absurd result that certain citizens of Missouri would be allowed to vote by absentee ballot who would not be entitled to vote in person. Furthermore, we would reach the result that students who attend schools in areas governed by Chapter 114, RSMo 1969, would not be allowed to vote either in person or by absentee ballot, since those counties do have a provision for absentee registration. In short, eligibility for the short presidential ballot would become entirely arbitrary and irrational.

If subsection (f) is read, however, to allow absentee ballots only to those persons who have been residents of Missouri more than one year who either have registered or who have not registered due to the lack of an absentee registration provision, but to deny absentee ballots to those persons who were able to register in person but neglected to do so, then the statute does make sense and it is consistent with the intent of Congress and the operation of Missouri election laws. The intent of Congress and of the State of Missouri to require registration as a precondition of voting in all but extraordinary cases would not be frustrated and the possibility of voter fraud would be minimized.

4. Finally, a statute should be read in a manner that is constitutional, when that is possible. Section 1973aa-1 was challenged before the Supreme Court in the case of Oregon v. Mitchell, 400 U.S. 112, 27 L.Ed.2d 272, 91 S.Ct. 260 (1970). Eight justices held that the statute was constitutional, while only one dissented. However, six of the eight justices who found the law valid did so on the grounds that it was in the exercise of the congressional power to protect the right of interstate travel, while only two found that it was an exercise of the congressional power to regulate federal elections and the right to vote in them. (Black and Douglas, JJ.). It is doubtful whether Congress intended to protect the right of some citizens to travel by voiding registration requirements as they apply to citizens who do not travel interstate. Furthermore, serious due process objections could be made to any interpretation of the statute that would allow certain citizens who have not registered to cast absentee ballots while denying them the right to vote in person, and that further denies other citizens, similarly unregistered for the same reasons, to cast any ballot whatsoever. The interpretation of the statute which allows absentee voting only for those citizens who do in fact travel, and are thereby

Honorable Robert A. Young

actually aggrieved by the absence of an absentee registration provision is consistent with both the power of Congress to protect interstate travel and with the due process clause.

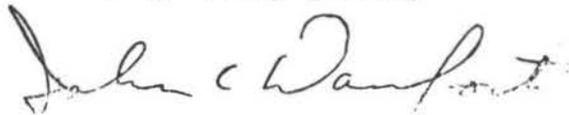
Some counties in Missouri have absentee registration provisions. Section 114.060, RSMo 1969. In these counties, of course, Section 1973aa-1 (f) is inoperative, and all applicants for absentee ballots who have lived in Missouri for more than one year must be registered.

#### CONCLUSION

It is the opinion of this office that persons who have resided in Missouri for thirty days or more but less than one year are eligible to vote in person or by absentee ballot for President and Vice President in this state without being registered. No person who has resided in Missouri for more than one year, and who is not registered to vote, except a person who has been absent from his home for such period of time that it has been substantially impossible for him to register to vote in person, is eligible to receive any ballot for the November 7, 1972, election, in those areas of Missouri in which registration is required, except that in areas with local option registration (Chapter 114, RSMo 1969), no person who has lived in Missouri more than one year and is not registered may receive a ballot. A person not registered who has resided more than one year in an area of Missouri in which registration is required (other than an area having local option registration) can receive an absentee ballot for President and Vice President only when he has been absent from his home for such period of time that it has been substantially impossible for him to register to vote in person.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Richard E. Vodra.

Very truly yours,



JOHN C. DANFORTH  
Attorney General

Enclosures: Op. No. 387  
9/3/71, Broomfield

Op. No. 277  
10/16/72, Wiley