

**ABSENTEE BALLOT:** Absentee ballot of person who expects to be absent from his county, but within the State on election day, should be counted although voter happens to be out of State all or a portion of election day.

November 18, 1944

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Mr. P. M. Marr  
Attorney at Law  
Milan, Missouri

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Dear Mr. Marr:

We have for attention your communication of today, in which you request the opinion of this Department in connection with the counting of absentee ballots in the general election held in November, 1944.

We submit our opinion on the question as stated:

"A resident of Missouri and of Sullivan County makes application to the County Clerk for civilian absentee ballot, duly votes it at the County Clerk's office at the time, and deposits same with the County Clerk, all within the time provided by law for voting an absentee ballot.

"On the day of the election such absentee voter happened to be out of the State for all or a portion of the day. Can such voter's ballot be validly challenged on the ground that the voter was out of the State on the day of the election?"

We herewith set forth Section 9, Article VIII of the Missouri Constitution, from which our absentee ballot laws stem:

"Qualified electors absent from the state on military or naval service shall, and qualified electors absent from their counties but within the state may, be enabled by law to vote at general or special elections."

Section 11470, Laws of Missouri, 1944, Extraordinary Session, page 19, provides as follows:

"Any person being a duly qualified elector of the State of Missouri, other than a person in military or naval service, who expects to be within the State of Missouri but absent from the county in which he is a qualified elector on the day of holding any special, general or primary election at which any presidential preference is indicated or any candidates are chosen or elected, for any congressional, state, district, county, town, city, village, precinct or judicial offices or at which questions of public policy are submitted, may vote at such election as hereinafter provided."

We do not find that this section of the statute, or Section 11470, Laws of Missouri 1943, page 527, has been construed. Of course, Section 11470, passed at the 1944 Extraordinary Session of our Legislature, is the last expression of the General Assembly on this question.

It is our opinion that if a person, having all of the legal qualifications to vote in the county, presents himself or herself at the County Clerk's office of his or her county, as stated in your question, within the time as provided by law, and makes application as provided by law, in which the person states that he or she expects to be within the State of Missouri, but absent from the county in which he or she is a qualified voter, on the day of the election, and casts his or her ballot accordingly, that he or she has legally cast the vote. The fact that the absentee voter happens to be out of the State for all or a portion of the election day does not disfranchise the voter, and the vote cannot be validly challenged on the ground that the voter happened to be out of the State all or a portion of the day of the election. The application, made by the voter at the time he applies for his ballot, is made in contemplation of Section 11470, Laws of Missouri, Extraordinary Session 1944, page 19, supra. That is, that the person expects to be within the State but absent from the county. It will be observed that the application by a voter for an absentee ballot, under the provisions of Sec-

tion 11472, Laws of Missouri, Extraordinary Session 1944, page 19, "may be made on a blank to be furnished by the county clerk or board of election commissioners or other officer or officers charged with the duty of furnishing ballots as aforesaid, or may be made in writing by first class mail addressed to such officer or board signed by said applicant."

We do not think that any court would disfranchise a voter who happened to be out of the State for all or a portion of the day on which the election was held, if, at the time he or she made application for a ballot he or she expected to be within the State but absent from his or her county, and, at the time of casting the ballot he or she made the affidavit substantially in the form as set forth in Section 11473, Laws of Missouri, 1944, Extraordinary Session, page 20, which affidavit states that the voter expects to be absent from said county of his or her residence on the date of said election. In other words, we think the expectation which the voter has expressed at the time of making his application for a ballot of being absent from the county of his or her residence, but within the State, and the continuation of such expectation at the time he casts his ballot, determines the question. It must be remembered that the election laws are made to induce eligible persons to exercise their right of franchise and not to discourage them in that great privilege and throw out their ballots, unless upon sound legal reasons.

#### CONCLUSION

It is, therefore, our opinion that the voter, under the conditions as stated above, has legally cast his ballot, and that same should be counted as cast.

Respectfully submitted,

COVELL R. HEWITT  
Assistant Attorney General

APPROVED:

ROY MCKITTRICK  
Attorney General

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