

ELECTIONS; ABSENTEE VOTER: County Clerk can have Absentee Ballots printed ~~not~~ more than ten days before the primary election. A qualified voter must apply in person to the county clerk, board or election commissioners of the county in which he claims residence for an absentee ballot.

June 14th, 1934

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Hon. Henry M. Phillips
Prosecuting Attorney,
Stoddard County,
Bloomfield, Missouri.

Dear Sir:

This Department acknowledges receipt of your letter of June 9th, wherein you request an opinion regarding several questions which have arisen under the new Absentee Ballot Law. Your letter is as follows:

"Some questions have been asked me by the Clerk of the County Court of this County relative to the manner of voting Absentee Ballots as prescribed by the 1933 Laws of Missouri on page 219 and following pages of the Session Acts thereof which are not clear to me, and for which I will thank you for your opinion as to the correct method of voting an Absentee Ballot.

If you will note this new law provides that any person expecting to be out of their County on Election day shall make application to the Clerk of the County Court in their County for a ballot and at the same time prescribes that they can do this not more than thirty days nor less than five days before the Election.

Some of the questions that are confusing are these: The General Statute provides that the County Clerk cause the ballots for the Election to be printed not more than ten days before the election. Therefore, will it be possible for the Clerk to furnish an Absentee Ballot thirty days before the Election?

If a voter has been absent from his home County for more than thirty days can he make application for an Absentee Ballot in any other County than his own?

If it is possible for you to give me your opinion outlining the method of voting an Absentee Ballot according to the provisions of this new law. The same will be appreciated very much."

I

County Clerk can have
Absentee Ballots printed
more than ten days before
the primary election.

We again restate your first question:

"Some of the questions that are confusing are these: The General Statute provides that the County Clerk cause the ballots for the Election to be printed not more than ten days before the election. Therefore, will it be possible for the Clerk to furnish an Absentee Ballot thirty days before the Election?"

The General Statute relating to the printing of the primary ballot is Section 10265, which Section, omitting the parts which are not pertinent, is as follows:

"On or before the 10th day before the holding of any primary election the county clerk shall correct any errors or omissions in the ballots, cause the same to be printed and distributed, as required by law in the case of ballots for the general election, except that the number of ballots to be furnished to each precinct shall be one and half times the number of votes cast by any party in the last preceding election and having nominees and tickets at such primary election."

The new Statutes, Sections 10181 and 10182, Laws of Missouri, 1933 p. 219, which apparently present the conflict are, respectively, as follows:

"SEC. 10181. Who may cast absentee ballot.-- Any person being a duly qualified elector of the State of Missouri, who expects in the course of his business or duties to be 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 candi-

dates 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."

"SEC. 10182. May apply for official ballot.-- Any elector as defined in the foregoing section expecting to be absent from the county of his residence on the day of such election may, not more than thirty nor less than five days prior to the date of such election, make application in person, to the county clerk or, where existing, to the board of election commissioners, or other officer or officers charged with the duty of furnishing ballots for such election in his voting precinct, for an official ballot for said precinct to be voted at such election."

The question arises by a close scrutiny of the three Statutes herein quoted as to how the qualified elector is to obtain the absentee ballot within the full thirty days of the primary when, as a matter of fact, the county clerk is not required to print the ballots until ten days before the primary. The Legislature repealed the old Statutes relating to absentee ballots and enacted Sections 10181 to 10188, inclusive, in lieu thereof. Section 10183 being designated, "Affidavit for ballot--form--printing of ballot" after setting out the form of the affidavit, contains the following provision at the close, p.221:

"* * *Provided, 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 as by this act authorized who is not lawfully entitled to vote, and if the applicant for ballot or ballots is entitled to receive same, the county clerk or the board of election commissioners, if any, or other official charged with the duty of furnishing such ballots immediately upon receipt of the printed ballots shall send by registered mail postage prepaid, or deliver in person an official ballot or ballots if more than one are to be used and voted at said election to such applicant. The official charged by

law with printing and supplying ballots under the general election laws of this state, shall cause to be printed and supplied a sufficient number of ballots to have printed at the top of such ballots the words 'official absentee ballot' to be furnished such absentee voters under the provisions of this act."

We call your attention to that portion of the quoted Statute, "The official charged by law with printing and supplying ballots under the general election laws of this state, shall cause to be printed and supplied a sufficient number of ballots to have printed at the top of such ballots the words 'official absentee ballot' to be furnished such absentee voters under the provisions of this act."

There is no time designated for the printing of such official absentee ballots therefore we are of the opinion that such official absentee ballots may be printed more than ten days before the primary election and may be printed in ample time so that a person applying for an absentee ballot can have the privilege as stated in Section 10182, of applying within the full time of thirty days before the primary election.

II

A qualified elector must apply in person to the county clerk, board or election commissioners of the county in which he claims residence for an absentee ballot.

The next question presented by your letter is as follows:

"If a voter has been absent from his home County for more than thirty days can he make application for an Absentee Ballot in any other County than his own?"

Section 10182 quoted, supra, contained the phrase:

"* * * not more than thirty days nor less than five days prior to the date of said election, make application in person to the county clerk, or, where existing, to the board or election commissioners, or other officer or officers charged with the duty of furnishing ballots for such election in his voting precinct, ***."

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We are of the opinion that the Statute is plain in its terms in that it compels the qualified elector to appear in person before the county clerk or other persons charged with the duty of furnishing ballots and that he must appear before such officials in his voting precinct, and hence a qualified elector cannot apply for an absentee ballot in any other county other than his own.

Your last question, being general in its terms relating to the provisions of the new law, we are enclosing a recent opinion relating to this subject rendered General H. W. Brown, Jefferson City, Missouri, which we believe correctly sets out the manner and procedure of one desiring to cast an absentee ballot.

Respectfully submitted,

OLLIVER W. NOLEN
Assistant Attorney-General

APPROVED:

ROY McKITTRICK
Attorney-General

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