

**ELECTIONS-ABSENTEE BALLOT:**

Any officer authorized by law to administer oaths may take the affidavit of a voter of an absentee ballot and make the certificate required by Sec. 11473, but such officer is prohibited from soliciting the voter to vote for or against any candidate or proposition while such voter is before him.

July 13, 1950



Honorable Ralph B. Nevins  
Prosecuting Attorney  
Hickory County  
Hermitage, Missouri

Dear Mr. Nevins:

This is in reply to your letter of June 26, 1950, requesting our opinion construing the terms of Section 11473, R.S. Mo. 1939, under the title of "Elections" on the question whether a candidate for a county office who had previously solicited a voter to support his candidacy would thereby be disqualified from taking the affidavit of the voter and making the certificate required by Section 11473. Your letter is as follows:

"I would appreciate an opinion on the following:

"Would the fact that one is a candidate for county office and had solicited an absentee voter some time previous to the date on which the absentee executes the oath on the official absentee ballot envelope, disqualify the person giving the oath and signing the certificate?

"I have reference to the part of the certificate which reads as follows:

"and that the affiant was not solicited or advised by me to vote for or against any candidate or proposition'."

Section 11473, Laws of Missouri, 1949, page \_\_\_\_\_, House Bill No. 5, is our present section of Article I, Chapter 76, R.S. Mo. 1939, under the title of "Elections". The absentee ballot law was first incorporated into our election laws, applicable only to general elections for public office, in 1913, Laws of Missouri, 1913, page 324. The Act was amended later to include primary elections, and now includes also elections on governmental propositions. The question submitted in your letter could arise only, we believe, when a voter, expecting to be absent from his precinct and county on the day of the election at which he desires to vote, appears and makes the affidavit required by said Section 11473, receives his absentee ballot, prepares and marks his ballot in the presence of an officer authorized by law to administer oaths, and no other person, but in such manner that such officer will not know how it is marked, then deposits it in the envelope as required by Section 11473 and securely seals the envelope, as provided in Section 11474, Laws of Missouri, 1949, page \_\_\_\_\_, House Bill No. 5, and thereupon the officer writes or prints upon the envelope the statement that the absentee ballot of the named voter is marked and sealed in the envelope in his presence, and the certificate required by said Section 11473 is then signed by the said officer and his official title noted thereon, and the ballot is then delivered in person to the issuing official who shall give his written receipt therefor.

The Act of 1913 provided that the absentee voter should present himself on election day at any general election at any voting precinct in this State, and, under the conditions prescribed in the Act, cast his ballot. Section 2 of that Act required that the voter make affidavit before one of the judges of such election identifying himself as a qualified elector in his named precinct and ward and county or the City of St. Louis and state therein that he was required to be absent from his said precinct on election day and that he had not voted nor would he vote elsewhere at said election. This was the then complete procedure to vote an absentee ballot.

This section was carried over without change or amendment in the Revision of 1919 as Section 4752, and in

the Revision of 1929 as Section 10182. There was no change made in this statute by the General Assembly in 1931. The Legislature of 1933, Laws of Missouri, 1933, page 218, repealed Section 10181 to Section 10188, both inclusive, of Chapter 61, R.S. Mo. 1929, relating to elections, and re-enacted in lieu thereof, a like number of new sections, numbered as were the repealed sections, and four additional new sections numbered 10188a, b, c, and d, respectively. Section 10184 of the 1933 Act, pages 221, 222, contained the first provision requiring a statement in the jurat and certificate of the officer taking the affidavit set forth on the reverse side of the envelope containing the absentee voter's ballot, certifying that "the affiant was not solicited or advised by me to vote for or against any candidate or proposition". Section 11473, R.S. Mo. 1939, was included without change, so far as the jurat and the certificate were concerned, in the amendment of Article 2, Chapter 76, Laws of Missouri, 1943, page 526, l.c. 528, 529. The section was amended in some particulars, but not as to the clerk's certificate, Laws of Missouri, 1944, Extra Session, page 18, l.c. 20. This provision is retained intact in the latest expression of the Legislature on this question, Laws of Missouri, 1949, page \_\_\_\_\_, House Bill No. 5.

We have a constitutional provision that voters shall have and enjoy the free exercise of the privilege of suffrage. This would mean the free, uninterrupted and uninfluenced right of the voter to cast his ballot at a lawful election, subject only to his obedience to the statutes regulating such elections and his eligibility as an elector at such elections. The statutes of this State provide penalties for the violation of election laws by officials required by law to perform duties incident to, and before, during, and after any election. Penalties are also prescribed for violation of election laws by the voter himself or those who would seek to corrupt his ballot or intimidate him or prevent in any manner the free exercise of his right of suffrage. But there is no statute in this State, nor has there ever been, prohibiting or making unlawful or immoral the mere solicitation of an elector's vote by a candidate as such, or by an individual who is not a candidate. The terms of Section 11473, Laws of Missouri, 1949, page \_\_\_\_\_, House Bill No. 5, as to the certificate, and preventing such solicitation of

the voter's favor, are leveled, we believe, exclusively at the action of the official, as an official, during the period, and is confined exclusively to the period, of time the elector is in the actual process of receiving and marking his ballot and during the time of making the affidavit required by Section 11473. It does not refer to, nor include, we believe, any period of time, nor place, previous to the time the elector may be in the presence of said official for such purposes. It does not, we believe, refer to any period of the past when a candidate for office, as an individual, solicited the suffrage of the voter, and who, by reason of his official status as county clerk, or other officer authorized by law to administer oaths, administers the oath and takes the affidavit of the elector and gives the certificate of negation required by the section.

The language used and the terms and meaning of the provisions contained in the certificate provided for in said Section 11473 plainly indicate, we believe, that the Legislature intended that the bar against a candidate soliciting the elector to vote for or against any candidate or proposition so as to prevent him from taking the affidavit of the voter should apply, and does now apply, only to the period and conditions arising exclusively while the elector is making the affidavit and marking his ballot, and that during that period he was not so solicited by the candidate.

The language provided in the certificate makes clear, we believe, the distinction the Legislature had in mind between an individual soliciting votes before an election and an officer performing his official duties when a voter of an absentee ballot appears before him to cast his ballot when this provision was included in the terms of our election statutes.

It was not the intention of the Legislature, we believe, to take away from the individual, although an officer and a candidate, when not in the performance of the official act of taking the affidavit of the absentee ballot voter, the political right to solicit support by the voters of his candidacy for election, or re-election, or on any proposition, merely because he is a candidate and in the

performance of official duties. But when the voter, in casting an absentee ballot, appears before such official, his taking advantage of his official position to further his candidacy or that of any person or to influence the voter for or against any proposition at the expense of the free exercise of the ballot by the voter, is the act we believe the Legislature had in mind and intended to and does prohibit.

#### CONCLUSION

It is, the opinion of this Department, therefore, that a candidate for public office, and who is an officer authorized by the laws of this State to administer oaths, is not disqualified from administering the oath to an absentee ballot voter or making the certificate required by Section 11473, Laws of Missouri, 1949, page \_\_\_\_\_, House Bill No. 5, that "the affiant was not solicited or advised by me to vote for or against any candidate or proposition", for the reason that the said candidate had in the past and previous to the time the absentee ballot voter appeared before such officer to receive, and did receive, his absentee ballot, and vote the same in obedience to the terms of said section, solicited such absentee voter to vote for such officer as a candidate for public office, but who, as such officer, while the voter of such absentee ballot was before him as an official incident to and during the time such voter marked and voted such ballot as required by said Sections 11473 and 11474, Laws of Missouri, 1949, pages \_\_\_\_\_, supra, did not solicit or advise such absentee ballot voter to vote for such officer as a candidate, or for or against any candidate or proposition.

Respectfully submitted,

APPROVED:

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