

ABSENTEE BALLOTS: Applications made by mail for absentee ballots
REGISTRATION: may be made signed either by the person's signature or his mark if properly authenticated.
ELECTIONS: If not authenticated, the Board of Election Commissioners should investigate to determine the validity of the application. If the application is made in person, by the voter, it may be executed, either by the voter's signature or his mark.

OPINION NO. 151

October 24, 1967

Mr. Fred A. Murdock, Chairman
Board of Election Commissioners
1331 Locust Street
Kansas City, Missouri 64106



Dear Mr. Murdock:

This opinion responds to your recent letter requesting an opinion of this office on two questions which you submit as follows:

"1. Is an application for an absentee ballot received by mail and 'signed' by mark valid and, if so, what adequate safeguards can the Board lawfully establish to prevent fraud through the use of such applications?

"2. Is an application for an absentee ballot made in person by the voter and 'signed' by mark valid?"

We note there that the above questions are limited to the application for an absentee ballot. Our opinion will therefore be limited to the "application for an absentee ballot."

Section 1.020(17), RSMo 1959, on the construction of statutes reads as follows:

"(17) 'Written' and 'in writing' and 'writing word for word' includes printing, lithographing, or other mode of representing words and letters, but in all cases where the signature of any person is required, the proper handwriting of the person or his mark, is intended;"

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Your first question on the application for an absentee ballot received through the mail and "signed" by a mark is answered in the affirmative within certain limitations which we will discuss later. We hold such an application to be valid if the request complies with the other requirements of the statute. We refer to Section 112.030, RSMo Supp. 1965, which reads as follows:

"Application for such ballot may be made on a blank signed by the applicant, to be furnished by the county clerk of the 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 the said applicant."

It is "a well settled rule of law that any mark intended as a signature acts as such." (City of Maplewood v. Johnson, 273 S.W. 237, 239).

We note parenthetically that we have previously ruled in Opinion No. 500 dated November 3, 1966, addressed to you, that the requirements of Chapter 112, RSMo as amended on absentee balloting, are mandatory.

The courts of this state hold generally that "Election laws must be liberally construed in aid of the right of suffrage" (Nance v. Kearbey, 158 S.W. 629, 1.c. 631). This statement was quoted with approval by the Supreme Court in an en banc decision of Application of Lawrence, 185 S.W.2d 818, 1.c. 820 and State v. Holman, 349 S.W.2d 945, 1.c. 947.

In the case of State v. Brown, 33 S.W.2d 104, the Missouri Supreme Court En Banc, on a statute concerning an absentee registration, said at 1.c. 107:

" * * * Now every person having the qualifications prescribed by the constitution has the right to vote, and the sole objectives of the statute is to determine the individuals who possess those qualifications and make a public record thereof * * *".

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Certainly, the courts have adopted a liberal interpretation in deciding the law on issues extending to those questions involving eligibility of voters, yet demanding strict compliance as to procedure.

These statutes on election laws cover several chapters governing election procedures. These statutes are closely related and are considered to be in pari materia. Therefore, they are to be read and construed together with effect given to all provisions of these chapters. Inasmuch as we do hold them in pari materia, we assume the position that the words "signed" or "signature" are to be applied and used as defined in Section 1.020(17), supra. Thus, where the signature of any person is required, the proper handwriting of the person or his mark is intended.

Accordingly, we conclude that the safeguards you inquire about are those dictated by the requirement to establish the identity of the voter. Thus, if the X-mark on the application is authenticated in some fashion as by a notary public or by signatures of witnesses whose authenticity as witnesses can be established from your records or otherwise, the application containing the X-mark of the voter should be accepted. If the X-mark is not authenticated (in some acceptable fashion), the Board has a duty to ascertain to their satisfaction, as by a personal interview, the validity of such X-mark, before an application for an absentee ballot is mailed.

Your second question is answered in the affirmative. An application made in person signed by the signature or "mark" of the applicant is valid for the reasons we discussed above. We note that the identity of the applicant for an absentee ballot should be established through comparisons of the applicant with registration records that are maintained in your office. Thus, you can establish that the applicant is the person whom he purports to be.

CONCLUSION

It is the opinion of this office that:

(1) That an application for an absentee ballot received by mail may either be executed under the signature of the applicant or his mark. In the latter case, the mark must be authenticated in some acceptable fashion. If the mark is not authenticated, the Board must ascertain to their satisfaction that the voter did, in fact, make the application for an absentee

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ballot before the absentee ballot is dispatched.

(2) An application for absentee ballot made in person by the voter may be executed by the signature of the applicant or by his mark.

The foregoing opinion which I hereby approve was prepared by my assistant Richard C. Ashby.

Yours very truly,



NORMAN H. ANDERSON
Attorney General