

ELECTIONS:
ABSENTEE VOTING:
NOTARY PUBLIC:

A notary public or other officer acknowledging absentee ballot affidavits is prohibited from assisting persons in marking absentee ballots and from receiving compensation for acknowledging absentee ballot affidavits.

OPINION NO. 262

October 20, 1972

Honorable W. Clifton Banta, Jr.
Prosecuting Attorney
Mississippi County
Post Office Box 469
Charleston, Missouri 63834



Dear Mr. Banta:

This opinion is in response to your request in which you ask:

"Can a Notary Public or other officer assist or aid an illiterate or blind person in reading and marking an absentee ballot under the provisions of Section 112.050, Revised Statutes of Missouri?"

"Can a Notary Public or other officer authorized to accept absentee ballots under Section 112.050, Revised Statutes of Missouri, accept a fee from a candidate or political committee or organization for going from house to house to persons who have applied for an absentee ballot and Notarizing these ballots?"

Section 112.050 to which you refer as amended by the 76th General Assembly, Second Regular Session, Senate Bill No. 461, provides:

"The absentee voter shall make and subscribe to the affidavits provided for on the return envelope before any officer authorized by law to administer oaths. The voter shall exhibit the ballot to the officer unmarked, and shall in the presence of the officer and of no other person mark the ballot in such manner that

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the officer cannot see or know how it is marked.
The ballot shall then in the presence of the officer be deposited in the envelope and the envelope securely sealed. The officer shall then write or print upon the envelope the following: 'Absentee ballot of (insert name of voter) marked and sealed in my presence', which certificate shall be signed by the officer and his official title noted thereon. The envelope shall be sent by mail by the voter, postage prepaid, to the election authority, or may be delivered in person by the voter to the issuing official, who shall give his receipt therefor. For the ballot to be eligible to be counted the envelope containing it shall be received by the election authority not later than four p.m. of the day before the election with the exception of absentee ballots for president and vice president which shall be received not later than the time for closing of the polls. No charge shall be made by any officer in this state for the acknowledgment of affidavits prescribed in this chapter." (Emphasis added)

The affidavits referred to in Section 112.050, now set out in Section 112.040, as amended by the 76th General Assembly, House Bill No. 1167, provide in part:

"I further swear that I marked the enclosed ballot in secret, . . .

"Subscribed and sworn to before me, an officer duly authorized under the laws of this state to administer oaths, this _____ day of _____, A.D. _____, and I hereby certify that the affiant has exhibited the enclosed ballot to me unmarked, and that he then in my presence, and in the presence of no other person and in such manner that I could not see his vote, marked such ballot and enclosed and sealed same in this envelope without my seeing or knowing his vote, and that the affiant was not solicited or advised by me to vote for or against any candidate or proposition." (Emphasis added)

In answer to your first question which asks whether the notary public or other officer can assist the absentee voter in marking

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his ballot, we enclose our Opinion No. 283, 1972 to Beckerle which holds that the notary or other officer cannot mark the ballot for the voter or know how such vote was cast. Such opinion also states our view respecting how such voters who need assistance may be helped in marking the ballot.

In answer to your second question respecting whether a notary public or other officer authorized to acknowledge such affidavits may receive a fee from a candidate or political committee or organization for going from house to house and acknowledging such ballot affidavits, we call your attention to the last sentence in Section 112.050, to wit:

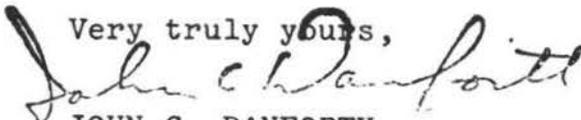
". . . No charge shall be made by any officer in this state for the acknowledgment of affidavits prescribed in this chapter."

In New v. Corrough, 370 S.W.2d 323 (1963) the Supreme Court of Missouri held that one reason for this provision was to protect the voter against being charged a fee for the privilege of casting his ballot and that, in that instance, the vote would be counted despite the fact that the evidence showed that the notary accepted a fee from a third party after the services were rendered. We find no other cases respecting this provision and we do not view the Corrough case as limiting the prohibition to cases where the voter is charged or makes the payment. That is, the language of the statute is strict and concise. No charge shall be made by such officer. In the situation you set out the notary is hired by certain persons to acknowledge such affidavits. In our view this is a violation of the provisions of Section 112.050 which prohibits such an officer from charging for such services.

CONCLUSION

It is the opinion of this office that a notary public or other officer acknowledging absentee ballot affidavits is prohibited from assisting persons in marking absentee ballots and from receiving compensation for acknowledging absentee ballot affidavits.

The foregoing opinion, which I hereby approve, was prepared by my assistant, John C. Klaffenbach.

Very truly yours,

JOHN C. DANFORTH
Attorney General

Enclosure: Op. No. 283-1972, Beckerle