

ELECTIONS: Form of application for ballot and envelope for return of ballot by absentee voter in army or navy.

September 17, 1940

n-17

Honorable Dwight H. Brown
Secretary of State
Jefferson City, Missouri



Dear Sir:

We acknowledge receipt of your request for an opinion under date of September 16, 1940, in which you submit for approval a form of application for an absentee ballot to be filed by a person outside the State of Missouri in the United States army or navy, together with a form of envelope in which the ballot of such absentee voter is to be returned, and your supplemental request in which you ask whether or not an officer in the United States army or navy may take the oath of such absentee voter.

In pursuance to the mandate of the Missouri Constitution, the legislature has enacted laws to enable those in the military or naval service to cast their ballots when absent from the state. This constitutional provision is Article VIII, Section 9, and is as follows:

"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."

The statute providing for the application for a ballot to be made by an absent voter who is a member of the Missouri National Guard and has been called into the service of the national government is Section 10226, R. S. Mo. 1929, which is as follows:

"Any absent voter as defined under the provisions of this article, who shall have complied with the provisions of the law relating to registration whether by the form outlined in section 10225 of this article or in person may make application by mail not more than fifteen nor less than five days prior to such election, to the county clerk of the county of which he is a resident, or board of election commissioners of the city of St. Louis or clerk of the city, town or township, as the case may be, for an official ballot to be voted at such election."

We note that this section does not require that the application for an absentee ballot be made under oath, and we believe that the following form is sufficient:

"APPLICATION FOR ABSENTEE BALLOT FOR PERSON OUTSIDE THE STATE, IN THE UNITED STATES ARMY OR NAVY, AS REQUIRED BELOW.

(Sec. 10226, R. S. Mo. 1929, and pages Nos. 383-384 of session acts of the State of Missouri for 1939)

I hereby make application for an absentee ballot to be voted in the _____ election, the _____ day of _____ 19 _____ TWP. _____
 (Month)

I hereby certify that I am a qualified voter in the _____ Prec. Ward _____
 _____ (City) _____ (County)

I certify that I will on the date of said election, be absent from the state on account of military or naval service at _____.

I hereby certify that the above and foregoing statements are correct.

Signed _____"

We also suggest that the following be printed on the form of application by way of endorsement for the convenience of the local officer in filing the application:

"APPLICATION FOR ABSENTEE BALLOT FOR PERSON OUTSIDE THE STATE, IN THE UNITED STATES ARMY OR NAVY

Name _____

Address _____

=====

Filed in my office, this _____

day of _____, 19_____

County Clerk.

By _____

Deputy.

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The statutes in regard to the manner of returning the ballot to the proper officer to be officially voted and counted are Sections 10227 and 10228, R. S. Mo. 1929.

"The clerk or other proper authority upon receipt of application and as soon as the official ballot has been completed and printed, shall

send by registered mail, postage prepaid, to the address the elector may indicate for a general election, one ballot each of the political parties and such other ballots as are to be voted for at said election, together with an official envelope for returning ballot or ballots voted, with the name, official title and address of such county, city, town or township clerk or other proper authority upon the face of said envelope and upon the back of said envelope the affidavit of said elector, which shall be substantially in the following form:

AFFIDAVIT.

State of _____)
) SS.
 County of _____)

I, _____, do solemnly swear that I have resided in the state of _____ for one whole year next before making this affidavit, and have resided in _____ county (or city as the case may be) for more than sixty days prior to this date and that I am in all respects a duly qualified elector of _____ township (or ward); that I reside at _____; that I am a _____, and that because of my duties I am required to be absent from my voting precinct in my said county (or city as the case may be) on the day of election to be held _____, 19____, and have had and will have no opportunity to vote thereat and that I have not voted and will not vote elsewhere at this election.

 Subscribed and sworn to before me this
 ____ day of _____, 19__.

 Notary.

"The elector shall upon receipt of a ballot or ballots, go before an officer authorized by law to take oath, administer and make and subscribe to the affidavit on back of envelope in which ballot or ballots are to be enclosed, and the voter shall thereupon in the presence of such officer and no other person, mark such ballot or ballots, but in such manner that said officer cannot know how said ballot or ballots were marked, and the ballot or ballots voted shall, in the presence of said officer, be folded by such voter so that each ballot will be separate and so as to conceal the marking and be enclosed in the envelope in which the affidavit was taken, in the presence of said officer, and in case there are rejected or unvoted ballots, the voter shall fold such ballots together and enclose in another envelope marked 'unvoted ballots' and enclose such envelope in the same envelope with the voted ballots which shall be securely sealed and registered to the office from which ballots were received, as per address on face of envelope. Provided, however, the official capacity of any notary of another state shall be verified by a proper certificate showing the authority of such person to take affidavits: Provided further, any elector may make application to the clerk, whose duty it is to issue ballots as defined by this article for an official ballot, if such ballots are in such officer's hands, and take oath as prescribed and vote and said clerk shall hold said ballot in his office until time to be sent to the precinct at which said elector is a qualified voter as hereinafter defined. Provided, however, that all absentee ballots shall be in the hands of the county clerk

September 17, 1940

or other official whose duty it is to forward ballots and election supplies to the various voting precincts not later than sixty-six hours preceding the time for opening the polls at such election. And the clerk shall note upon the envelope containing such ballots, the day and hour which he received same."

The envelope submitted is that used by resident voters of the state who are temporarily absent from their respective wards or precincts, and differs somewhat from the form required in Section 10227, supra. We believe that the wording of the affidavit should be changed to conform to the above statute. We are of the opinion that the form on the reverse of the envelope should be used when the new envelopes are printed.

In regard to your question concerning the authority of officers in the military and naval service of the United States to administer oaths, we direct your attention to Section 1784, R. S. Mo. 1929, which is as follows:

"Oaths, affirmations and commissions to take the deposition of any person without this state engaged in the military service of the United States may be executed before and by an officer in the said service above the rank of lieutenant; and of any person engaged in the naval service of the United States before any officer in that service above the rank of ensign; and affidavits and depositions of such persons so taken, if otherwise taken in accordance with law, shall be received and may be used in evidence, or for any other purpose, in the same manner as if taken before any officer now authorized by the laws of this state to administer oaths and affirmations or take depositions."

Hon. Dwight H. Brown

- 7 -

September 17, 1940

Under this statute, affidavits by any person without the State of Missouri taken before any officer in the United States army above the rank of lieutenant, and the affidavits of any person in the naval service taken before any officer in the United States navy above the rank of ensign, are valid, and when in this form on the envelope in which the ballot of such person is returned should be received by the official to whom such ballots are properly addressed as a proper affidavit.

Respectfully submitted,

ROBERT L. HYDER
Assistant Attorney General

APPROVED:

COVELL R. HEWITT
(Acting) Attorney General

RLH:VC