

ELECTIONS: Amending absentee voting laws.

January 25, 1944



Honorable Forrest C. Donnell  
Governor of Missouri  
Jefferson City, Missouri

Dear Governor Donnell:

Under date of January 21, 1944, you wrote this office requesting an opinion, as follows:

"Your opinion is hereby respectfully requested on each of the following questions:

"(a) What changes, if any, should be made in the law of Missouri in order that absentee ballots for the primary election may be sent at least forty-five days prior to said primary election to qualified electors of Missouri who are serving in the armed forces of the United States?

"(b) What changes, if any, should be made in the law of Missouri in order that absentee ballots for the general election may be sent at least forty-five days prior to said general election to qualified electors of Missouri who are serving in the armed forces of the United States?"

In order that the reasons for our conclusion will more readily appear, the statutes pertinent to your question will be set out. These statutes are as follows:

Section 11470, R. S. Mo. 1939, as amended by the 62nd General Assembly, Laws of 1943, page 527, authorizes the vot-

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ing of an absentee ballot by persons who are out of the state by reason of military or naval service:

"Any person being a duly qualified elector of the State of Missouri, who expects to be absent from the county in which he is a qualified elector, but within the state, on the day of holding any special, general or primary election at which any presidential preference is indicated or any candidates 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, or any qualified elector absent from the state on military or naval service and who may on the occurrence of any such election be absent from his voting precinct because his duties require him to be without the state on the day of such election may vote at such election as hereinafter provided. Provided, however, any voter who votes both by absentee ballot and in person at any election shall be guilty of a misdemeanor."

Section 11478a, Laws of 1943, page 524, also provides authority for casting absentee ballots by such persons:

"Any person being a duly qualified elector of the State of Missouri who expects to be absent from the State of Missouri by virtue of the fact that such person is a member of any of the various branches of the armed services of the United States as same may be defined by the Executive Departments of the United States of America, and who is so absent on the day of holding any special, general or primary election at which any candidates are chosen or elected for any congressional, state, district,

county, town, city, village, precinct or judicial office or at which questions of public policy are submitted may vote at such election as hereinafter provided, regardless of whether or not said elector has complied with the provisions of any laws requiring the registration of voters."

Section 11478b, Laws of 1943, page 524, requires application to be made not more than thirty days nor less than two days before the election:

"Upon the request of such person in writing, by letter or otherwise, made not more than thirty nor less than two days prior to the date of such election to the county clerk or board of election commissioners, if any, or other official charged herein with the duty of furnishing ballots to such applicants, hereinafter referred to as an election official stating that at the time of such request he is a duly qualified elector of the State of Missouri and reasonably expects at the time of such election to be absent from the State of Missouri or from the United States on the day of such election due to the fact that such person is in the armed services of the United States, such election official shall promptly append the name of such person to the list of applicants for absentee ballots in the manner and form provided for by Section 11472, Revised Statutes of Missouri, 1939, and such election official shall promptly mail to such person absentee ballot in the form and manner hereinafter provided: Provided further that written application for the mailing of absentee ballot to such person in the armed services of the United States may be made upon affidavit submitted by the father, mother or spouse of such person, in which case application and

affidavit of the father, mother or spouse so applying shall contain a statement as to the military status of the person in the armed services for whom application is being made, his last known address and shall recite that no other similar application is being made on behalf of such person to the best of affiant's information and belief. When such request is made in connection with a primary election, ballots for each political party will be mailed with instructions that voter shall vote one ballot and return the remaining unvoted ballot. In the event more than one request or application for absentee ballot for such person or voter in the armed services should be received by the election official above referred to, an absentee ballot shall be mailed to such person in the armed services only upon and in relation to the first request or application made or received."

Section 11478c, Laws  
with the last two above sections.

"Such person or applicant may  
ballot and make affidavit re  
said section, regardless of the  
such person or applicant might not  
time be within the territorial limit  
the State of Missouri or of the United  
States."

By Section 11472, R. S. Mo. 1929, as amended, Laws  
1943, pages 527-8, "official absentee ballots" are required  
to be printed at least thirty days before the election:

"Application for such ballot may be made  
on a blank to be furnished by the county  
clerk or the board of election commis-  
sioners 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 duly executed by the said applicant. Immediately upon receipt of such application within the time and in the manner provided by this article, the county clerks of the county, or the board of election commissioners, if any, or other official charged herein with the duty of furnishing ballots to such applicants, shall make a list of the names of such absent voters whose applications for ballots have been received, and shall cause such list to be immediately posted in a conspicuous place accessible to the public at the entrance of the office of such officer or officers which list shall show also the postoffice address, street address, ward or precinct number given by such applicant. Such list shall be supplemented daily by the addition thereto of the names, addresses, and precinct numbers of those thereafter making application for such ballots as by this article authorized: 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 article 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 sup-

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plying ballots under the general election laws of this state, shall, at least thirty days before any election held under the provisions of this article, cause to be printed and supplied a sufficient number of ballots to be designated as 'official absentee ballots' to be furnished such absentee voters under the provisions of this article."

Section 11554, R. S. Mo. 1939, requires the secretary of state to certify to the county clerks the names of persons who have filed as candidates at least fifty-five days before the primary election:

"At least fifty-five days before any primary preceding a general election, the secretary of state shall transmit to each county clerk a certified list containing the name and postoffice address of each person who shall have filed declaration papers in his office, and entitled to be voted for at such primary, together with a designation of the office for which he is a candidate, and the party or principle he represents."

At first glance it might appear that the desired result could be achieved by amending the sections relative to making applications for absentee ballots and the printing of the official absentee ballots, to make them read forty-five days instead of thirty days. However, if the application is not received until forty-five days before the election, time would be required to mail out the ballot and forty-five days would not be left for the ballot to reach the applicant and be returned. The same thing would be true as to the printing of ballots, so the period of time should obviously be made longer.

The question of how much time should be given is a practical measure with which the writer has had little contact, but the old adage, "What is time enough always proves little enough," prompts the suggestion that these sections

should be amended to read sixty days instead of thirty days. This would leave fifteen days intervening between the time the ballots are required to be printed and the forty-five days before the election. The section relating to the making of applications could fix an earlier time for the receiving of applications, and it might be well if this were done, as persons in Australia, New Zealand, and other distant points could not nicely gauge the time of the arrival of an application.

Such amendments would not fully solve the problem which exists at the present time. Section 11550, R. S. Mo. 1939, fixes the final date for the filing by candidates of declarations of intention, which is sixty days before the primary:

"The name of no candidate shall be printed upon any official ballot at any primary election, unless at least sixty days prior to such primary a written declaration shall have been filed by the candidate, as provided in this article, stating his full name, residence, office for which he proposes as a candidate, the party upon whose ticket he is to be a candidate, that if nominated and elected to such office he will qualify, and such declaration shall be in substantially the following form:  
\* \* \* \* \*

This section would also have to be amended if the time for printing the absentee ballots was fixed at sixty days before the primary. Fifteen days might be sufficient to intervene between the closing of the filing time and the printing of the ballots. This would make the closing date for filing seventy-five days before the primary.

Section 11554, R. S. Mo. 1939, should also be amended to direct the secretary of state to certify to the county clerks the names of candidates filed earlier than the fifty-five days now required. As the general assembly considered five days sufficient time between the closing of the filing date and the certifying of the names of candidates by the secretary of state, it is suggested that this section be amended to read seventy days instead of fifty-five days.

In regard to your second question as to mailing ballots to electors in the armed services at least forty-five days before the general election, Sections 11470, 11472, 11478a, 11478b and 11478c, supra, apply to general elections as well as to primary elections, and the suggested changes would be sufficient to accomplish the desired result. However, Section 11541, as amended, Laws of 1943, page 536, requires the secretary of state to certify the names of the nominees to the clerks of the county courts not less than thirty days before the election:

"Not less than thirty days before an election to fill any public office, the secretary of state shall certify to the clerk of the county court of each county within which any of the electors may by law vote for candidates for such office, the names and the description of each person nominated for such office, as specified in the certificates of nomination filed with the secretary of state."

This section would have to be amended to conform to the other amendments. As there are more than ninety days intervening between the primary election and the general election, this section could be amended to read seventy days instead of thirty days.

In addition to what has been said, it is desired to call to your attention Section 11474a, as enacted by the 62nd General Assembly, Laws of 1943, page 530, et seq. The first three subsections are quoted for your information:

"In lieu of the foregoing provisions for voting an absentee ballot any qualified elector who is absent from the state on military or naval service, and who may on the occurrence of any election mentioned in Section 11470 of this Act, be absent from his voting precinct because his duties require him to be without the State on the day of such election, may vote an absentee ballot by the following procedure:

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"1. For the purpose of making application for absentee ballot by such absent voter as mentioned in this Act, the application by post card, which is provided for under the 'War Ballot Act' of the 77th Congress, Public Law 712, H. R. 7416, shall be received and taken by the Secretary of State as an application to vote the absentee ballot provided for under this Act.

"2. Within ten day after the time for filing candidates' affidavits for nomination for primary election has expired, and within ten days after the persons have been nominated or elected as candidates for any of the offices mentioned in this Act, it shall be the duty of the clerks of the county courts, the boards of election commissioners in precincts where such boards conduct elections, or, in case of city, town or village elections which are not conducted by boards of election commissioners, the city clerk thereof, to certify to the Secretary of State the names of all candidates who have filed for nomination or who have been nominated as the case may be. Such lists shall be filed in the office of the Secretary of State and for election purposes shall be deemed as the 'official election lists'. The Secretary of State, upon receipt of such official election lists shall compile them and cause same to be printed in pamphlet form in sufficient numbers to meet the demands of the said absent voters. These pamphlets shall contain the names of the candidates for nomination or election, the office to which they aspire, the county, city, village or district in which they are candidates, and assembled under the names of the respective counties, cities, villages or districts in which they are candidates. This pamphlet shall also name the party or independent body under which such candidates are to be nominated or elected as the case may be. A pamphlet for each county and the City of St. Louis may be printed instead of placing all such

lists in one printed pamphlet. Such pamphlet shall also contain proposed amendments to the Constitution of the State or other propositions or questions which may be submitted to a vote in the State at large.

"3. The Secretary of State upon receipt of said lists, shall make requisition upon the clerk of the county court of each county and the city of St. Louis, the boards of election commissioners in cities and counties where such boards conduct elections, or, in case of city, town or village elections which are not conducted by boards of election commissioners, the city clerk thereof, for an appropriate number of regular ballots of said county, precinct, city, town or village, who are hereby required to furnish said ballots without delay, and the Secretary of State shall use said ballots as 'war ballots' in carrying out the provisions of this Section 11474a. Such ballots shall provide for voting for electors for President and Vice-President of the United States, United States Senators and Representatives in Congress, all state officers, county officers, city, town and district officers, as the case may be, and for voting upon any proposed amendment to the State Constitution, or any other proposition or question which is submitted to a vote in the State at large. The ballots for voting upon amendments to the Constitution of the State and other propositions shall be separate from ballots to be used for voting for the nomination or election of officers. The ballots to be used for voting for the nomination or election of officers shall have printed thereon, under the respective titles to the offices to be voted upon, the names of the candidates for President and Vice-President, United States Senators, and State officers who are to be voted upon in the State at large, and sufficient blank spaces shall be left on the ballots under

the appropriate title to the respective district, county and local office to be filled by such election, which blank shall be used by said voter to write in the name or names of his choice of candidates to such office. The names of candidates shall be printed in columns under the name of the party or independent body under which such candidate seeks nomination or election, as the case may be. Blank spaces shall be left in each column under the name of the party or independent body which has candidates whose names are not printed on the ballot. Ballots for voting upon Constitutional amendments and other propositions shall contain the official title of the proposed amendment or proposition, followed by the words: 'For the Amendment.' ('For the Proposition'), and 'Against the Amendment' ('Against the Proposition'). The Secretary of State shall cause to be prepared and printed an appropriate number of official envelopes for use in connection with such official war ballots. Each such envelope shall be gummed, ready for sealing. Upon one side of such envelope shall be printed in substantially the following form the following:

OFFICIAL WAR BALLOT

NAME OF VOTER .....  
 RESIDENCE (Street and number, if any).....  
 COUNTY OF .....  
 CITY or TOWN .....

Upon the other side of the envelope shall be printed the following oath:

OATH OF ELECTOR

I do hereby swear (or affirm), that I am a citizen of the United States and am now of the age of at least twenty-one years, or will be on the ..... (here insert date of election); that I have been an inhabitant

of the State of Missouri for....years,  
 next preceding this election and for  
 .....months preceding such election a  
 resident of the County of.....resid-  
 ing at (street and number, if any), in  
 the City (or Town) of .....;  
 that I am in active military (or naval)  
 service of the United States and that I  
 have not received or offered, do not ex-  
 pect to receive, have not paid, offered  
 or promised to pay, contributed, offered  
 or promised to contribute to another, to  
 be paid or used, any money or other thing  
 as a compensation or reward for the giv-  
 ing or the withholding of a vote at this  
 election, and have not made any promise  
 to influence the giving or withholding  
 of any such vote; and that I have not  
 been convicted of bribery or any infamous  
 crime, or, if so convicted, that I have  
 been pardoned or restored to all the  
 rights of a citizen, without restriction  
 as to the rights of suffrage.

.....  
 Voter must sign here, and  
 oath MUST BE administered  
 and attested.

Subscribed and sworn to before me this....  
 day of..... 194...

.....  
 Commissioned Officer."

Subsection 3 should be amended to authorize the early printing of war ballots. This section, as it now exists, directs the secretary of state to requisition from the local officers "regular" ballots to be used as "war" ballots. We have official absentee ballots (Section 11472, R. S. Mo. 1939) and official ballots (Section 11595, R. S. Mo. 1939), but no regular ballots. It may be the intention was to have the official absentee ballots used as war ballots, but if this is to be a workable method of casting absentee ballots, following Public Law 712, enacted by the 77th Congress, subsection 3 will necessarily have to be amended.

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The statutory provisions regarding the submission of constitutional amendments would also need to be amended. Section 11676, R. S. Mo. 1939, as amended by Laws of 1943, page 537, requires the secretary of state to certify to the clerk of the county court of each county questions to be submitted not less than thirty days before the election. This section should be amended to conform to the time for certifying the names of nominees or candidates.

The foregoing constitute the major changes that would be necessary to achieve the result suggested in your letter. The state has a large number of election statutes which apply only in cities and counties of a specified population, and due to the limited time available these laws have not been as carefully checked for conflicts with the suggested changes as they should be. This office will gladly continue checking these statutes applying in particular cities and counties to determine if any of them are in need of amendment. However, it might be advisable to contact the various election boards that administer these laws with the view of ascertaining such changes, if any, as might be necessary.

Respectfully submitted

W. O. JACKSON  
Assistant Attorney General

APPROVED:

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ROY McKITTRICK  
Attorney General

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