

Absent Voter Ballots—Ballots—Sealing—Stamping.

Where the envelope containing an absent voter's ballot is not properly sealed this is a wrongful act of an election official and not of the elector and the ballot should be received.

The words "official ballot" may be stamped upon an absent voter's ballot before it is deposited by the election judges if it corresponds to the number certified to them by the county clerk.

October 26, 1928.

Horace W. Judson, Esq.,
County Attorney,
Cut Bank, Montana.

My dear Mr. Judson:

You have requested my opinion on the following questions:

"1. In cases where the sealing wax has been omitted entirely or only a portion of the impression of the seal is made upon the sealing wax on an envelope containing the ballot voted by an absent voter, should such ballot be rejected?

"2. Section 695 of the 1921 statutes provides that the words 'official ballot' shall be stamped upon the back of official ballots before being delivered by the judges to electors. Does this also apply to ballots delivered to absent voters, and if so, should ballots received from absent voters be accepted by the judge of election without the words 'official ballot' stamped thereon as provided in this section?"

In answer to your first question will say that in the case of *Carwile v. Jones*, 38 Mont. 590 our supreme court held that "a voter is not to be disfranchised by the errors or wrongful acts of election officers." It is therefore my opinion that where the officer before whom the elector votes does not properly seal the envelope containing the ballot, as provided by law, that this is a wrongful act on the part of an election officer only and the ballots should be counted.

In answer to your second question, section 724 R. C. M. 1921 provides as follows:

"The ballot or ballots to be delivered or marked by such absent voter shall be one of the regular official ballots to be used at such election, and of each kind of such official ballots if there be more than one kind to be voted, beginning with ballot one and following consecutively, according to the number of applications for such absent voter ballots. The county or city or town clerk shall keep a record of all ballots so delivered for the purpose of absent voting, as well as of ballots, if any, marked before him as hereinafter provided, and shall make and deliver to the judge of election, to whom the ballots for

the precinct are delivered, and at the time of the delivery of such ballots, a certificate stating the numbers of ballots delivered or mailed to absent voters, as well as those marked before him, if any, and the names of the voters to whom such ballots shall be delivered or mailed, or by whom they shall have been marked if marked before him."

It is to be noted that by this section it is not made the duty of the county clerk to stamp the ballot with the words "official ballot." Further, section 727 R. C. M. 1921 provides the manner in which such ballots shall be handled by the election judges, and, among other things, provides:

"They shall indorse the same in like manner that other ballots are indorsed, shall detach the stub as in other cases, and deposit the ballot or ballots in the proper ballot-box or boxes. * * * ."

From the foregoing it is my opinion that the words "official ballot" are stamped upon the ballot before it is deposited by the election judges.

Very truly yours,

L. A. FOOT,
Attorney General.