

Absent Voter's Ballot, When to be Counted—Elections, When Absent Voter's Ballot May Be Counted.

In order to be counted an absent voter's ballot must reach the judge of election so that it may be deposited before the closing of the polls.

August 25, 1920.

Mr. A. J. Duncan,
County Clerk and Recorder,
Helena, Montana.

Dear Sir:

You have requested my opinion regarding two questions arising under the absent voter's law (Chap. 155, Sess. Laws 1917), such questions being the following:

1. If an absent voter's ballot is received by the county clerk too late for delivery by the county clerk to the judges of election before the closing of the polls, but in time so that it can be delivered to the judges of election before the judges have finished counting the votes, can such ballot be delivered to the judges after the polls are closed and be counted by such judges?

2. If an absent voter's ballot is received by the county clerk after the polls have closed and after the judges have finished counting the ballots and made their return, can such ballot be counted by the county clerk, or the canvassing board, when the votes are canvassed on the third day after the holding of the primary election?

Section 8 of the absent voter's law (Chap. 155, Session Laws 1917) requires the county clerk, upon receipt of the envelope containing the absent ballot, to forthwith enclose the same, unopened, together with the application of the absent voter, in a larger envelope, which shall be sealed and upon which the following endorsement shall be placed:

"This envelope contains an absent voter's ballot and must be opened only on election day at the polls when the same are open."

Section 9 then prescribes the manner in which absent voters' ballots received by the county clerk must be delivered to the judges of election, and provides that when an absent voter's ballot is received before the official ballots are delivered to the judges such absent voter's ballot, after being placed in the larger envelope endorsed as provided in Section 8, shall be delivered to the judges of election at the same time the official ballots are delivered to such judges; but if the absent voter's ballot is not received by the county clerk until after the official ballots have been delivered to the judges of election, then such absent voter's ballot, after being placed in the larger envelope endorsed as provided in Section 8, shall be mailed to the judges of election.

Section 13 of said chapter then prescribes definitely and distinctly the duties of the judges of election with reference to such absent voter's ballots, so much of such section as is pertinent here being as follows:

“At any time between the opening and closing of the polls... on such election day, the judges of election of such precinct shall first open the outer envelope only, and compare the signature of such voter to such application with the signature to such affidavit. In case the judges find the affidavit sufficient and that the signatures correspond, and that the applicant is then a duly qualified elector of such precinct and has not voted at such election, they shall open the absent voter’s envelope in such manner as not to destroy the affidavit thereon, and take out the ballot or ballots, therein contained, and without unfolding the same, or permitting the same to be opened or examined, shall ascertain whether the stub or stubs is or are still attached to the ballot or ballots, and whether the number thereon corresponds with the number in the County or City or Town Clerk’s certificate. If so they shall endorse the same in like manner that other ballots are endorsed, detach the stub, as in other cases, deposit the ballot or ballots in the proper ballot box or boxes, and make in their election lists and books the proper entries to show such elector to have voted.”

The foregoing provisions and requirements are plain, clear and definite and they require:

1. That the absent voter’s ballot must be delivered to the judges of election *before the polls are closed.*
2. That it must be *deposited in the ballot box at some time between the opening and closing of the polls.*

No provisions can be found in such law authorizing the judges of election to open the envelope enclosing the absent voter’s ballot or to deposit the same in the ballot box at any other time than during the time the polls are open, and no provisions whatever can be found in such law authorizing any other person, except the judges of election, to open the envelope enclosing the absent voter’s ballot at any time, or for any other person, except the judges of election to open such ballot.

No one will assert that an elector, who may appear at the polls after they have closed but before the judges have finished counting the ballots, has a right to vote, or that the judges of election can permit such elector to vote, and neither will any person assert that an elector may appear before the canvassing board on the third day after the election, and exercise his right to vote, yet to permit an absent voter’s ballot to be received and counted by the judges after the polls have closed, or to permit such a ballot to be counted by the canvassing board on the third day after the holding of the election would be exactly the same as permitting an elector to vote after the closing of the polls, or to vote before the canvassing board.

The absent voters’ law is intending to afford an opportunity to electors, who will be absent from their county on election day, to vote in exactly the same manner and to the same extent as though they appeared in person at the polls, but it is not intended to grant to such absent voters any greater rights or privileges than those possessed by electors appearing in person at the polls. In the one case the elector

must appear in person during the hours the polls are open, otherwise he cannot vote. In the other case the ballot of the absent elector must be deposited in the ballot box during the time the polls are open, otherwise it cannot be considered a vote.

You are therefore advised that it is my opinion that both questions must be answered in the negative, and that no absent voter's ballot can be counted unless it is delivered to the judges of election before or on election day, and deposited in the ballot box during the time the polls are open.

Respectfully,

S. C. FORD,

Attorney General.