

Elections—Absent Voter Ballots—Death.

Upon the death of a voter prior to the date of the election, who has voted an absent voter's ballot, the ballot should be counted as it is the voting and not the counting which governs.

A. J. Whitehead, Esq.,
Clerk and Recorder,
Cut Bank, Montana.

Nov. 17, 1926.

My dear Mr. Whitehead:

You have requested my opinion on the following question:

"Upon the death of a voter, prior to the date of the election, who has voted an absent voter's ballot, can the ballot be counted?"

The absent voter's law gives a voter the right, under certain conditions, to vote prior to the election day and the voting is the act which must govern any questions of this kind. If at the time of voting the voter was a qualified elector then the ballot itself must necessarily be legal. It is the same situation as though an elector had voted in person on the morning of the election and died before the ballots were counted that evening. There being no way to ascertain which ballot had been cast by the voter, it would be clearly impossible to refuse to count the ballot, and if I were to hold that the counting of a ballot cast by a voter who had died after voting and before the counting, was illegal, then the results of the election would be placed in jeopardy by an element over which the election judges had no control.

It is, therefore, my opinion that it is the voting and not the counting of the ballot which governs and that since the ballot was voted according to law it should be counted.

Very truly yours,
L. A. FOOT,
Attorney General.