

Absent Voters—Ballots—Fraud.

If an application is properly made for an absent voter's ballot and the clerk finds that the applicant and the person signing the registration card are one and the same person the ballot must be delivered.

An absent voter's ballot must be received when properly voted and the only recourse of the judges where a voter is known to have wilfully violated the provisions of the absent voter's act is to file a complaint against the voter.

July 31, 1928.

Mrs. Alice Crittenden,
County Clerk,
Townsend, Montana.

My dear Mrs. Crittenden:

You have requested my opinion on the following questions:

"1. May an elector who is ill at his home within Broadwater county make an application for an absent voter's ballot and cast his vote in this manner when in truth and fact the said voter has no real intention of being absent from the county on election day?"

"2. When one who is ill does apply for an absent ballot and does cast his ballot in this manner, and thereafter up to and including the day of election remains in the county, is such a ballot legal and should it be counted?"

In answer to your first question will say that there is no provision of the statute authorizing a person who is ill at his home within the county to vote an absent voter's ballot; moreover, the application for an absent voter's ballot provides that the elector must sign an affidavit to the effect that he expects to be absent from said county, and

section 718 R. C. M. 1921, as amended by chapter 151, laws of 1923, provides that when such application is received properly subscribed by the applicant the county clerk must compare the signature on the application with the applicant's registration card and if convinced that the person making the application for absent voter's ballot and the person who signed the original registration card is one and the same person he shall accept the same in good faith and deliver the ballot.

It is therefore my opinion that if the application is properly subscribed and sworn to that it is the duty of the county clerk, after comparing the signatures and finding that the applicant and the person who signed the registration card is one and the same person, to deliver the ballot.

In answer to your second question will say that if the ballot is properly voted as provided by statute that it must be accepted and counted. Section 734 R. C. M. 1921 makes it the duty of any elector who has taken advantage of the provisions of the absent voter's act and who is in fact present in the county on election day, to present himself to the judges of election at said voting place, and provides a penalty for wilfully neglecting to do so, and it is to be noted under the provisions of this section that where the elector does present himself to the judges of the election that the absent ballot cast by him is still acceptable and the judges simply note in the ballot book and list the fact of his appearance as well as whether or not he voted in person.

Section 3732 R. C. M. 1921 provides a penalty for any person who shall wilfully swear falsely to any affidavit in this act provided for.

From the foregoing it is evident that the fact that whether an elector intends to be absent from the county on the day of election is a matter which is entirely within the knowledge of the elector, and that there is no discretion upon the part of the county clerk as to whom an absent voter's ballot shall be delivered if proper application is made therefor, or upon the part of the judges of election in receiving and counting absent voter's ballots when properly voted and that the only recourse is in filing charges against anyone who has wilfully violated the provisions of the absent voter's act.

Very truly yours,

L. A. FOOT,

Attorney General.