

## No. 503

**ELECTIONS—VOTING—ABSENT VOTERS—OATH AND  
AFFIRMATION—MILITARY SERVICE**

**Held:** Commissioned officers of the United States Army are not officers authorized by the laws of Montana to administer oaths or take acknowledgments. Hence, the affidavit required by Section 721, Revised Codes of Montana, may not be subscribed before such an officer. (This rule is not, however, applicable to the oath of elector required by Public Law 712 of the United States Congress.)

October 17, 1942.

Mr. Raymond Shelden  
County Attorney  
Carter County  
Ekalaka, Montana

Dear Mr. Shelden:

You have asked this question:

May an absent soldier voter who votes by absent ballot subscribe the affidavit required by Sections 720 and 721, Revised Codes of Montana, 1935, before a commissioned officer of the United States Army?

Section 720, Revised Codes of Montana, 1935, prescribes the form of affidavit to be executed by the absentee voter at the time of voting. Section 721, Revised Codes of Montana, 1935, provides in part:

“Such voter shall make and subscribe the said affidavit before an officer authorized by law to administer oaths, and who has an official seal, and may do so at any place in the state of Montana, or in any other state or territory of the United States, before any officer authorized by the laws of this state to take acknowledgments of instruments without the state. . . .”

Section 463, Revised Codes of Montana, 1935, sets forth who may administer and certify oaths. Section 388 authorizes notaries public to

administer oaths. Sections 6905 and 6906 list the officers by whom acknowledgments may be taken in this state. Section 6907 enumerates the officers by whom an acknowledgment may be taken without the state.

No provision is made in any of the above sections for the taking of an acknowledgment or the administering of an oath by a commissioned officer of the United States Army—and, hence, I must agree with your opinion that the above question must be answered in the negative.

It must be remembered, of course, this rule applies only to the absentee voter who casts a ballot under the authority of the Montana laws regarding absent voters. It is not applicable to the voter of an official war ballot provided for by Public Law 712 of the Seventy-seventh Congress. Public Law 712 governs only where the absentee soldier voter does not vote an absentee ballot or in person under the authority of Montana law. The soldier who votes the official war ballot provided by Public Law 712 must subscribe an "Oath of Elector," which is set forth in the act and which oath may be taken before a commissioned officer.

Sincerely yours,

R. V. BOTTOMLY  
Attorney General