

N.D.A.G. Letter to McIntee (Oct. 29, 1986)

October 29, 1986

Mr. Michael S. McIntee
McHenry County State's Attorney
P. O. Box 246
Towner, ND 58788-0246

Dear Mr. McIntee:

Thank you for your letter of September 29, 1986, regarding the application for an absent voter's ballot sent to you by the Republican National Committee.

N.D.C.C. Ch. 16.1-07 governs absentee voting and provides in pertinent part as follows:

16.1-07-01. ABSENT VOTER -- WHO MAY VOTE.

1. Any qualified elector of this state who, at any general, special, or primary state election, at any county election, or at any city or school district election, is absent from the city, township, or consolidated voting precinct in which he is an elector, is in the armed forces of the United States, is in the merchant marine of the United States, is physically disabled, or is a United States citizen living outside the United States who resided in this state immediately prior to his departure from the United States, may vote an absent voter's ballot at that election.

* * *

(Emphasis supplied.)

16.1-07-06. APPLICATION FORM.

1. Application for an absent voter's ballot shall be made on a blank furnished by the proper officer of the county, city, or school district of which the applicant is an elector, or on any blank containing the required information and in substantially the following form:

I, _____, a duly qualified elector of the township of _____, or of the _____ precinct of the _____ ward and residing at _____ in the city of _____ of the county of _____ of the state of North Dakota, to my best knowledge and belief entitled to vote in such precinct at

the next election, hereby make application for an official absent voter's ballot to be voted by me at such election. I understand that it is a criminal offense to make a false statement in order to obtain an absentee ballot.

I have resided in my precinct for at least thirty days.

My phone number is _____.

Dated this _____ day of _____, 19____.

(signature of applicant)

(mailing address)

* * *

(Emphasis supplied.)

When making a request for an absent voter's ballot, clearly, a voter is not required to make the request on an application supplied by the county auditor. However, an absentee ballot application must comply with the requirements prescribed by N.D.C.C. § 16.1-07-06.

Upon review of a sample copy of the absentee ballot application mailed to North Dakota voters by the Republican National Committee, it is apparent that the application conforms to the requirements of the law. As you are aware, the absentee ballot application contains additional language certifying that the voter will be absent or is physically disabled.

There are two other statutes concerning absentee ballot applications which need to be discussed. N.D.C.C. § 16.1-07-05 specifies the time period when a voter may make application to the county auditor, the auditor or clerk of the city, or the clerk of the school district, as the case may be, for an absent voter's ballot. N.D.C.C. §16.1-07-07 states that the appropriate election official shall mail or deliver the application blank to the voter upon a personal application made at the official's office. Both of these statutes are permissive rather than mandatory. They provide methods by which an absent voter's application may be obtained. These methods, however, are not exclusive and do not act to forbid the distribution of absent voter's applications by other means.

The distribution of absentee ballot applications by individuals other than the county auditor is not presently a regulated activity. The practice of indiscriminate mailings of absentee ballot applications is questionable, however, and the Legislature may want to take a look at this practice. I appreciate the fact that you have taken the time to draw this to my attention.

Sincerely,

Nicholas J. Spaeth

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