

**OPINION
60-108**

March 1, 1960 (OPINION)

ELECTIONS

RE: Special Elections - Absent Voters' Ballots

This is in reply to your request for an opinion whether or not absent voters ballots for the senatorial election to be held in conjunction with the primary election this year can be used.

The North Dakota Supreme Court had under consideration a similar question in the case of *State ex rel Lanier v. Hall*, 23 N.W.2d. 44, 74 N.D. 426. In this case the court held that absent voters' ballots may be cast only at general and primary elections. The court further pointed out that the mere fact that a special election was held in conjunction with a primary election did not change the features of the special election.

The court observed that various amendments to the absent voters laws up to that time did not amplify the original act or extend the scope of the act to include any elections other than general or primary.

Aside from the impracticability because of the mechanics involved in using an absent voter's ballot, the court apparently concluded that the absent voters ballot law did not provide that such ballot be used at other than general or primary elections. The court also took cognizance of the fact that the 1919 Legislature by Chapter 32 extended the law to include a right to vote by absent voters ballot at special elections but such measure was referred to the people and disapproved by them June 30, 1920 (see page 252 Session Laws 1921). The court then concluded that it is clear from the language and the history of the absent voters statutes that absent voters ballots can only be used in general and primary elections. The decision was based on the statutes as found after the 1944 special session. However, since then the legislature has amended several provisions of the absent voters ballot law.

In 1947 by section 1, chapter 171, the Legislature amended section 16-0804 and provided that:

". . . the secretary of state, county auditor, or any other officer by law required to prepare any general or primary election ballots, to prepare and have printed and delivered to the county auditor at least twenty days prior to the holding of any general or primary election,"

The major change was from sixty days to twenty days. The sixty-day item was considered by the Supreme Court in the above cited case. The court took this into consideration

together with the time when nominating petitions for special election were required to be filed which was and still is twenty-five days prior to the date of election. It recognized the impossibility of having the names of candidates printed on the absent voters ballot which at that time had to be printed sixty days before election, whereas the nominating petitions were not required to be filed any earlier than twenty-five days before election.

In 1953 the North Dakota Legislature by chapter 148 amended section 16-1803 which read as follows:

"For all general and primary elections, and for all special elections when such special elections for state and county offices are held at the same time as a general or primary election there shall be prepared and printed for each precinct official ballots to be known as absent voters' ballots. Such ballots shall be prepared and printed in the same form and shall be of the same size and texture as the regular official ballots, except that the absent voters' ballots shall be printed upon tinted paper of a tint different from that of the sample ballots." (emphasis supplied)

This same section was again amended in 1957 by Chapter 160. The language of the statute remained the same except the legislature deleted that portion relating to using tinted paper for absent voters ballots.

The 1957 Legislature also amended section 16-1801 by chapter 159 which provides as follows:

"ABSENT VOTER - WHO MAY VOTE. Any qualified elector of this state, who is absent from the county in which he is an elector, or who by reason of physical disability, or who is in the military or naval service or the merchant marines of the United States of America, and, is unable to attend at the polling place in his precinct to vote at any general or primary election, may vote an absent voters' ballot at any such election as hereinafter provided. . .
"

It then defines and sets out what is meant by military or naval service or the merchant marines of the United States or in the military service, etc. It is noted that this section provides that any qualified elector who is unable to attend the polling place in his precinct to vote at any general or primary election may vote by an absent voters ballot. Taking this section alone it would leave the impression that the absent voters ballot is limited for use only in the general or primary election.

However, in considering section 16-1803 of the 1957 Supplement as amended it becomes eminent that the North Dakota Legislature meant to permit the use of absent voters ballots in special elections where such special election is held in conjunction with the general or primary election and where such special election is for a state or county office. To hold otherwise would nullify the specific provision of section 16-1803 as amended. It is true that section 16-1801 is entitled "Absent Vote, Who May Vote" and that section 16 1803 is

entitled "Preparation and Printing of Ballots." However, we must go beyond the mere headings of the statutes. Every effort should be made to reconcile the two statutes.

In considering the provisions of each statute we arrive at the conclusion that any person who is absent at a general or primary election because of certain reasons is entitled to use an absent voters ballot. This is the logical conclusion that can be reached in construing the statutes in question together. Apparently the legislature wished to extend to members absent from the regular polling places at a general or primary election the right to use absent voters ballot law to overcome some of the mechanics in administering such law as we have previously pointed out in the case cited above.

Thus the legislature by legislation having overcome the mechanical difficulties in using the absent voters ballot at a special election in conjunction with a general or primary election and recognizing the specific legislation on this subject, it is our opinion that absent voters ballots may be used at the senatorial election to be held with the primary election this year, and that absent voters ballots may be used at any special election involving the election of a state or county office where such special election is held in conjunction with a general or primary election.

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