

ABSENTEE VOTING: Absentee voting not authorized at elections
ELECTIONS:
TOWNSHIPS: wherein only township officers are elected.
VOTING:



March 26, 1953

Honorable James J. Wheeler
Prosecuting Attorney
Chariton County
Keytesville, Missouri

Dear Mr. Wheeler:

In your letter of March 16, 1953, you requested an official opinion on the following question:

"The question has arisen as to whether or not absentee ballots can be cast at this township election under section 112.010, R.S.Mo. 1949, which provides for the casting of absentee ballots at any 'special, general or primary election at which any presidential preference is indicated or any candidates are chosen or elected for any congressional, state, district, county, town, city, village, precinct or judicial offices or at which questions of public policy * * * .!"

Constitutional authorization for absentee voting is provided by Article VIII, Section 7, Missouri Constitution of 1945, as follows:

"Absentee voting. -- Qualified electors of the state who are absent, whether within or without the state, may be enabled by general law to vote at all elections by the people."

Statutory provision for absentee voting by persons not in military or naval service is provided by Section

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112.010, RSMo 1949, as follows:

"Any person being a duly qualified elector of the state of Missouri, other than a person in military or naval service, who expects to be absent from the county in which he is a qualified elector on the day of holding any special, general or primary election at which any presidential preference is indicated or any candidates are chosen or elected, for any congressional, state, district, county, town, city, village, precinct or judicial offices or at which questions of public policy are submitted, or any person who through illness or physical disability expects to be prevented from personally going to the polls to vote on election day, may vote at such election as herein provided."

In order to determine whether absentee ballots may be cast at township elections the above section must be examined and construed. To aid in the construction of said statute is the statement of the Supreme Court in *Nance v. Kearbey*, 251 Mo. 374, 158 S.W. 629: "Election laws must be liberally construed in aid of the right of suffrage. * * *"

Section 112.010 states in considerable detail at what elections absentee ballots may be cast. Such ballots may be cast at only special, general, or primary elections at which any presidential preference is indicated or any candidates are chosen or elected for any congressional, state, district, county, town, city, village, precinct or judicial offices or at which questions of public policy are submitted.

In construing statutes having such detailed provisions the maxim of "expressio unius est exclusio alterius" should be applied. This maxim is discussed and defined in *City of Hannibal v. Minor*, 224 S.W. 2d 598, as follows:

" * * * There is a fundamental principle of construction which has been recognized and applied from time immemorial by our courts to such questions as we

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have here. It is embodied in the maxim: 'Expressio unius est exclusio alterius' which means that the express mention of one thing, person or place implies the exclusion of another. * * * "

It is also noted that Section 112.300, RSMo 1949, provides for casting of absentee war ballots by persons in military or naval service in the following instances: "Special, primary or general election in which any presidential preference is indicated, or any candidates are chosen or elected for any congressional, state, district or county election or at which any question of public policy is submitted." (Emphasis ours.)

Since there are two statutes providing for absentee voting by different classes of persons, viz., military and civilian, and both statutes go into considerable detail as to the elections in which absentee voting is authorized, and are not identical, it must be presumed that the legislature intended to authorize absentee voting only in the elections which are set forth. In neither section are "township offices" or "township elections" mentioned.

CONCLUSION

It is, therefore, the opinion of this office that absentee voting is not authorized at elections wherein only township officers are elected.

This opinion, which I hereby approve, was prepared by my Assistant, Mr. Paul McGhee.

Yours very truly,

JOHN M. DALTON
Attorney General

PMcG:sw:lrt