



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN 11, TEXAS**

Gerald C. Mann  
~~WILL WILSON~~  
ATTORNEY GENERAL

Hon. John R. Shook  
Criminal District Attorney  
Bexar County  
San Antonio, Texas

Attention: Jay Sam Levey,  
Assistant

Opinion No. O-4897  
Re: Construction of  
Article 2956, R.C.S.,  
respecting absentee  
voting.

Dear Mr. Shook:

We beg to acknowledge receipt of your letter respecting the construction of Article 2956, of the Revised Civil Statutes, your questions propounded being as follows:

"1. Where an elector intends to be absent from the county upon election day, mails in his application to the county clerk within the period described by law, together with the statutory fee to cover postage, is it the duty of the county clerk to mail a ballot to such elector to his address located within the county?

"2. On what day does absentee voting begin and on what day does absentee voting end for the general election to be held on November 3, 1942?

"3. When do absentee ballots have to be in the hands of the county clerk in order to be counted in the election?"

We answer your questions categorically, giving briefly our reasons for such answer, in the order propounded by you, as follows:

1. Subdivision 3 of Article 2956 authorizes the county clerk to deliver to an elector desiring to cast an absentee vote (such elector making his personal appearance before the county clerk) within the time there specified, and provides for the marking and depositing of the ballot by the elector.

Subdivision 4 relates to the application for a ballot by an elector, as follows:

"The application, including fifteen cents (15¢) to cover postage, shall be mailed to the County Clerk of the elector's residence whose duty it shall be forthwith to mail to such elector a blank official ballot and ballot envelope as provided in Subdivision 3, which ballot shall be marked by elector, or by witness at the direction of said elector in case of the latter's inability to mark such ballot because of physical disability, in the presence of a Notary Public or other persons qualified under the law to take acknowledgments, and in the presence of no other person except said witness and/or such officer, and in such manner that such officer cannot know how the ballot is marked, and such ballot shall then in the presence of such officer be folded by the elector or by said witness in case of physical disability of said elector, deposited in said envelope, the envelope securely sealed, the endorsement filled out, signed and sworn to by the elector, or in case of physical disability, then by the said witness for and in behalf of said elector, and certified by such officer and then mailed by said officer, postage prepaid, to the County Clerk."

It is thus apparent that Subdivision 2 deals with the elector who desires to cast his absentee vote by delivering same personally to the County Clerk, and Subdivision 4 deals with the elector who contemplates mailing his ballot to the County Clerk. Subdivision 2 necessarily requires the personal appearance of the elector before the clerk, whereas Subdivision 4 clearly does not. It specifically authorizes the clerk to mail the ballot and envelope to the applicant, and likewise authorizes the elector to mail the ballot back to the clerk duly marked. Your first question, therefore, is answered in the affirmative.

In Opinion No. 0-4700, addressed to Honorable Ben J. Dean, District Attorney, Breckenridge, Texas, we answered five specific questions with respect to the authority of the county clerk to send to an elector an absentee ballot raising points of irregularity in the application therefor, which opinion clearly involved your question above, and as clearly implied the right and duty of the clerk to send out such a ballot. A copy of that opinion is attached hereto.

2. Subdivision 5, dealing with the receipt and disposition of ballots by the clerk, is as follows:

"Upon receipt of any such ballot sealed in its ballot envelope duly endorsed, the clerk shall keep the same unopened until the second day prior to such election, and shall then enclose same together with the elector's application and accompanying papers, in a larger or carrier envelope which shall be securely sealed and endorsed with the name and official title of such clerk, and the words 'this envelope contains an absentee ballot, and must be opened only at the polls on election day,' and the clerk shall forthwith mail same, or deliver it in person, to the presiding judge of election, or to any assistant judge of election, in said precinct.

"And ballots mailed out by the county clerk within the legal time, but not received back by him on or before the third day prior to the election on the day of election, shall not be voted, but shall remain in the custody of the county clerk during the thirty (30) day period provided in Subdivision 6."

Subdivision 6 deals with the final casting of the ballot, and reads as follows:

"On the day of such election, and in the presence of the election officers, and the supervisors, if any, one of the judges of election shall, between the hours of 2:00 and 3:00 o'clock open the carrier envelope only, announce the elector's name and compare the signature upon the application with the signature upon the affidavit on the ballot envelope. In case the election board finds the affidavits duly executed, that the signatures correspond, that the applicant is a duly qualified elector of the precinct, and that he has not voted in person at said election, they shall open the envelope containing the elector's ballot in such manner as not to deface or destroy the affidavit thereon, take out the ballot therein contained without permitting same to be unfolded or examined and having endorsed the ballot in like manner as other ballots are required to be endorsed, deposit the same in the proper ballot box and enter the elector's name in the poll list the same as if he had been present and voted in person. If the ballot be challenged by any election

officer, supervisor, party challenger, or other person, the grounds of challenge shall be heard and decided according to law, including the consideration of any affidavits submitted in support of or against such challenge. If the ballot be admitted, the words 'absentee voter' shall be set down opposite the elector's name on the poll list. If the ballot be not admitted, there shall be endorsed on the back thereof the word 'rejected', and all rejected ballots shall be enclosed, securely sealed, in an envelope on which words 'rejected absentee ballots' have been written, together with a statement of the precinct and the date of election, signed by the judges and clerks of election and returned in the same manner as provided for the return and preservation of official ballots voted at such election. In all cases the application poll tax receipt or exemption certificate, ballot envelope and the affidavits and certificates accompanying same shall be returned by the officers of election to the county clerk who shall keep all such papers except poll tax receipts and exemption certificates for one (1) year and shall return poll tax receipts and exemption certificates to the voter at any time after the same have been returned to him except in case of challenge when such poll tax receipts and exemption certificates shall be held thirty (30) days and as much longer thereafter as any court or reviewing authority may direct."

If, by the words "on what day does absentee voting begin", you mean the act of the voter in depositing or mailing to the clerk his vote, the answer is "not more than twenty days prior to the date of the election." As applied to the coming election on November 3, that would be October 14. In like manner, the absentee voting ends not less than three days prior to the election, which, in the coming November election, would be midnight, October 30.

We held the same in Opinion No. O-4455, addressed to Honorable Dan W. Jackson, District Attorney, Houston, Texas, a copy of which we hand you herewith.

3. Your third question is answered by the last paragraph of Subdivision 5 above quoted; that is, no ballot not received back by the clerk on or before the third day prior to the election shall be voted. A ballot in the United States

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mails not actually received by the clerk before midnight of Friday, October 30, should not be voted or counted in the election of November 3.

Very truly yours

ATTORNEY GENERAL OF TEXAS

By /s/ Ocie Speer  
Ocie Speer, Assistant

APPROVED: OPINION COMMITTEE  
BY: BWB, CHAIRMAN

APPROVED OCT 13, 1942  
/s/ Gerald C. Mann  
attorney general of texas

os-MR:wb

Enclosure

OK  
/s/ GWB