



THE ATTORNEY GENERAL OF TEXAS

GROVER SELLERS

AUSTIN 11, TEXAS

~~ATTORNEY GENERAL~~

Honorable Sidney Latham
Secretary of State
Austin, Texas

Dear Sir:

Opinion No. O-5993

Re: Absentee voting of members of
the armed forces of the United
States.

Your letter of April 27, 1944, requesting the opinion of this department on the questions stated therein is as follows:

"Under Public Law 277, Seventy-Eighth Congress, free postage via air mail is provided for absentee ballots cast by servicemen even though cast under State law.

"The War Ballot Commission, created by such act, has recommended a certain type of envelope for use by the States in order to facilitate the identification and handling of absentee ballots in the mail. A specimen of the recommended envelopes is enclosed herewith. Article 2958, VACS, prescribes the form of envelopes to be used for absentee ballots cast under State Law, and also makes the requirement for the enclosure of the poll tax receipt, or affidavit of its loss, together with 15 cents to cover postage.

"In the light of the above facts, will you please advise this Department upon the following inquiries:

- "1. Should the enclosure of 15 cents postage be required by County Clerks of Servicemen since free air mail postage is provided for under Federal law?
- "2. Are the County Clerks of Texas authorized to adopt the form of envelope bearing the same of similar identification marks shown on the specimen, assuming the envelope otherwise complies with the requirements of Article 2956?
- "3. Will one application for an absentee ballot suffice for more than one election, provided the Serviceman specifies in the application that he desires a ballot for both the first and second primary or for both primaries, and the general election?
- "4. Can a County Clerk furnish an absentee ballot to a Serviceman where the poll tax receipt is not enclosed with the application, but is presented to the Clerk by the wife or authorized agent of the Serviceman?"

Article 2956, Vernon's Annotated Civil Statutes, pertains to absentee voting and under the provisions of said statute, the elector who is entitled to vote absentee may make application for an official ballot at any time in accordance with the provisions of subsection 2 of such statute, and the clerk may mail such ballot to such absentee voter immediately upon receipt of such application. Subdivision 4 of Article 2956, among other things, provides in effect that when an elector who makes written application for a ballot, as provided in subdivision 2 of the Act, the application of said elector, including 15 cents 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 of said statute. It is apparent that the 15 cents mentioned in the foregoing statute is for the purpose of paying postage in sending the blank official ballot and ballot envelope to the elector.

Under Public Law 277, free postage by air mail is provided for absentee ballots cast by Servicemen even though cast under the State law. Therefore, it is apparent that no postage is required in mailing official ballots and ballot envelopes to electors coming within the provisions of said law. This being true, it is our opinion that your first question as stated above, should be answered in the negative, and it is so answered.

With reference to your second question, you are respectfully advised that it is the opinion of this department that the county clerks of this State are authorized to adopt the form of envelope bearing the same or similar identification marks shown on the specimen enclosed with your inquiry, assuming the envelope otherwise complies with the requirements of Article 2956. Stated another way, said envelope must comply with the provisions of Article 2956, but for the purpose of identification and to facilitate the mailing and transferring the official ballots and envelopes and the return thereof, the identification marks shown on the specimen heretofore mentioned, may be added for the purposes heretofore mentioned. However, it should be noted where the words "Secretary of State, etc.," appear, the same should be changed showing the officer, namely, the county clerk who sends out said ballots to members of the Armed Forces.

We now consider your third question. As heretofore stated, the elector who is entitled to vote absentee, may make application for an official ballot at any time in accordance with the provisions of subsection 2 of Article 2956, and the clerk may mail such ballot to such absentee voter immediately upon receipt of such application. We know of no reason why the elector cannot make one application for an absentee ballot for more than one election, provided the Serviceman specifies in the application that he desires a ballot for both the first and second primary or for both primaries and the general election. The clerk to mail said ballots requested by said application as soon as such ballots are available.

In considering your fourth question, it will be noted that subdivision 2 of Article 2956 provides, in part, as follows:

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". . . Such application shall be accompanied by the poll tax receipt or exemption certificate of the elector, or, in lieu thereof, his affidavit in writing that the same has been lost or mislaid. . . ."

In view of the foregoing provision of said statute, it is our opinion that the county clerk is authorized to furnish an absentee ballot to a Serviceman when his poll tax receipt is presented to the clerk by his wife or authorized agent. In other words, when the application is presented to the county clerk, and the wife of the Serviceman or his authorized agent presents his poll tax receipt before the clerk has taken any action, then the county clerk is authorized to forward the absentee ballot to the Serviceman. When the application is received and the poll tax receipt of the applicant is presented to the county clerk, it is our opinion that the provisions of the statute are complied with in that the poll tax receipt accompanies the application.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By /s/ Ardell Williams

Ardell Williams
Assistant

AW:EP:egw

APPROVED MAY 5, 1944

/s/ Geo. P. Blackburn
(Acting)

ATTORNEY GENERAL OF TEXAS