



WILLIAM J. SCOTT
ATTORNEY GENERAL
STATE OF ILLINOIS
SPRINGFIELD

February 27, 1976

FILE NO. S-1051

**ELECTIONS:
County Clerk's Duty
to Deliver Absentee
Ballots**

Honorable Paul C. Komada
State's Attorney of Coles County
P. O. Box 297
Charleston, Illinois 61920

Dear Mr. Komada:

This is in response to your letter concerning the county clerk's duty to deliver ballots to absentee voters. You ask whether the county clerk may refuse to mail absentee ballots to voters within the county who are not physically incapacitated to attend the polls on election day. Such refusal would, in effect, force such an absentee voter to apply for an absentee ballot in person, and to vote the ballot in the office of the county clerk.

The circumstances under which a qualified voter,

Honorable Paul C. Komada - 2.

who resides in the county and is not a member of the military, may vote by absentee ballot are set out in section 19-1 of The Election Code (Ill. Rev. Stat. 1974 Supp., ch. 46, par. 19-1), which provides:

"§ 19-1. Any qualified elector of the State of Illinois (other than one to whom an absentee ballot has been delivered or mailed pursuant to Article 20 of this Act) having duly registered where such registration is required who expects to be absent from the county in which he is a qualified elector or who because of being appointed a judge of election in a precinct other than the precinct in which he resides or who because of physical incapacity or the tenets of his religion in the observance of a religious holiday or who because of election duties in the office of a state's attorney, a county clerk or Board of Election Commissioners will be unable to be present at the polls 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, may vote at such election as hereinafter in this Article provided.

Each state's attorney, county clerk and Board of Election Commissioners shall compile and keep current a list of his or its officers or employees who are eligible to vote under this Article by reason of election duties."

Any voter who qualifies under section 19-1 of The Election Code may apply in writing, either by mail or in person, for an absentee ballot in accordance with sections 19-2 and 19-3 of The Election Code. (Ill. Rev. Stat. 1974 Supp., ch. 46, pars. 19-2 and 19-3, as amended by P.A. 79-814.) After receipt

Honorable Paul C. Komada - 3.

of a proper written application, the county clerk must then, in pursuance of section 19-4 of The Election Code (Ill. Rev. Stat. 1973, ch. 46, par. 19-4, as amended by P.A. 79-814) verify the voter's qualifications, post his name, and supply him with a ballot through the mail or, where the applicant has chosen to appear in person, by personal delivery at the clerk's office. Section 19-4 states:

"Immediately upon the receipt of such application either by mail, not more than 30 days nor less than 5 days prior to such election, or by personal delivery not more than 30 days nor less than one day prior to such election, at the office of such county clerk or Board of Election Commissioners or of the officer or officers charged with the duty of furnishing ballots as aforesaid, it shall be the duty of such Board of Election Commissioners, if any, or such other officer to examine the records to ascertain whether or not such applicant is lawfully entitled to vote as requested, and if found so to be, to post immediately thereafter the name, street address, ward and precinct number or township and district number, as the case may be, by such applicant given on a list to be kept by such officer or officers for such purpose in a conspicuous place accessible to the public at the entrance of the office of such officer or officers, and immediately thereafter to mail, postage prepaid, or deliver in person in such office an official ballot or ballots if more than one are to be voted at said election." (emphasis added.)

Section 19-6 of The Election Code (Ill. Rev. Stat. 1973, ch. 46, par. 19-6) provides that after voting his ballot, the absentee voter must endorse his certification upon the envelope in which the ballot is to be enclosed (Ill. Rev. Stat.

Honorable Paul C. Romada - 4.

1973, ch. 46, par. 19-5) and then "the envelope shall be mailed by such voter, postage prepaid, to the officer issuing the ballot or, if more convenient, it may be delivered in person, * * *".

It is evident that the voter who will be absent for any of the reasons set out in section 19-1 of The Election Code has the option of receiving and casting his absentee ballot either by mail or in person and that the county clerk has no power to interfere with the voter's choice. Section 19-2 of the Code expressly confers the right upon an absent voter without any distinction as to the reasons for his absence, to apply for a ballot either in person or by mail, provided that he complies with the requirements set forth therein. Section 19-6 expressly provides that such absentee voter shall return his ballot, either by mail or by personal delivery, to the officer who initially sent the ballot to him. Nothing in the statute grants the county clerk the power to dictate the mode of receipt or return of a ballot by any absentee voter who requests the ballot on some authorized ground other than physical incapacity to appear at the clerk's office.

Honorable Paul C. Romada - 5.

Finally, section 19-4 of The Election Code imposes the express duty upon the county clerk to deliver a ballot to an applicant "immediately" after the county clerk's determination that the application is timely, that the applicant is qualified to vote, and after the applicant's name has been posted, as required by section 19-4. If delivery cannot be made because the applicant has not chosen to receive it at the county clerk's office, then delivery must be made by mail.

Where, as here, the terms of a statute are peremptory and exclusive, where no discretion is reposed, the provisions of the statute must be regarded as mandatory. (Clark v. Quick, 377 Ill. 424.) I have emphasized that delivery is to be effected immediately after posting of the applicant's name. This requirement precludes any basis for supposing that the county clerk can, by investigating the truth of the applicant's affidavit, delay the applicant's receipt of his ballot, or that the clerk may refuse to mail absentee ballots to anyone not physically incapacitated, or that he may require any such applicant to appear at the county clerk's office to receive absentee ballots.

In conclusion, any qualified absentee voter has the option to apply for a ballot in person at the county clerk's office, or by mail. He likewise has the option of returning

Honorable Paul C. Romada - 6.

it in person or by mail. The county clerk has the express mandatory duty to provide absentee ballots to all voters who qualify under section 19-1 of The Election Code, who have submitted timely applications, and who are otherwise qualified to vote in accordance with section 19-4 of The Election Code.

It, therefore, is my opinion that the county clerk has no power to limit the mailing of absentee ballots to only those applicants who are physically incapacitated; nor may the clerk require that absentee ballots, from other than incapacitated voters, be voted in person at his office.

Very truly yours,

A T T O R N E Y G E N E R A L