

lected, for the reason that no appropriation was made of moneys exceeding the amount actually received in the treasury to the credit of said fund prior to January 1, 1929.

In view of the conclusions herein reached, it is deemed unnecessary specifically to answer the question asked in your letter in the paragraph numbered "4."

Respectfully,

EDWARD C. TURNER,  
*Attorney General.*

2756.

ABSENT VOTER'S BALLOT—APPLICATION FOR—REQUIREMENTS OF  
—LATEST DATE FOR FILING.

SYLLABUS:

1. *The latest day a voter can make application for an absent voter's ballot is Saturday at midnight when the election is to be held on the following Tuesday.*
2. *An application for an absent voter's ballot must be made in writing and state that the applicant is a qualified elector in the precinct in the county in which he desired to vote and will be unavoidably absent from such precinct on election day and request that he receive the absent voter's ballot and bear the signature of said applicant.*
3. *In view of the provisions of Sections 5078-1 and 5078-8, General Code, construed together, an application cannot be made by telegraph for the reason that the law contemplates the application bearing the signature of the applicant.*
4. *There is no legal authority for an authorized agent or attorney to sign the elector's written application for an absent voter's ballot.*

COLUMBUS, OHIO, October 19, 1928.

HON. J. R. POLLOCK, *Prosecuting Attorney, Defiance, Ohio.*

DEAR SIR:—In your recent communication you request my opinion as follows:

"The Deputy State Supervisors of Elections of Defiance County, Ohio, have heretofore made it a practice of permitting absent voters to cast their votes as late as Monday evening before the election on the following day.

QUESTION: What is the latest date a voter can make application for an Absent Voter's ballot?

The second question which said Board has raised is: What is the proper form of application for an Absent Voter's ballot?

QUESTION: Can an application be legally made by telegraph?

QUESTION: Can the duly authorized agent or attorney of a duly qualified elector sign said elector's written application for an Absent Voter's ballot?"

In considering your inquiry reference is made to Section 5078-1, General Code, which in part provides:

"It shall be lawful for any qualified elector who finds that he will be unavoidably absent from his home precinct on the day of any general, special or primary election to apply to the clerk of the board of deputy state supervisors of elections of his home county in writing or in person not earlier than thirty days and not later than three days prior to election day, stating the fact of his unavoidable absence from his precinct on election day and making application in writing for an absent voter's ballot. After such clerk shall have satisfied himself that the applicant is a duly qualified voter in such pre-

cinct and is the person representing the name in which such application is made and that in precincts where registration is required the applicant has complied with the law in regard to registration, he shall deliver to such voter or send him by registered mail, as the case may be, one of the absent voter's ballot provided for such election, together with an identification envelope and a return envelope such as are hereinafter described, to be used by said voter as hereinafter directed. \* \* \*"

It will be observed that the section above quoted in unambiguous language provides that any qualified elector, who finds that he will be unavoidably absent from his home precinct on the day of any general, special or primary election, may apply to the clerk of the Board of Deputy State Supervisors of Elections not earlier than thirty days and not later than three days prior to said election.

This section was under consideration by the Attorney General in 1918, and in an opinion reported in Opinions of the Attorney General for said year, Vol. II, page 1453, it was held:

"An absent voter has a right to make application for an absent voter's ballot at any time up to midnight of Saturday, where an election is held on Tuesday."

Said opinion is based upon a ruling of the Supreme Court in *State vs. Board of Deputy State Supervisors and Inspectors of Elections*, 93 O. S. 14, the syllabus in that case reading:

"1. Under the provisions of Section 5004, General Code, the period for filing nominating petitions does not expire until the end of the sixtieth day previous to the day of election, and it is the duty of the board of deputy state supervisors of elections to provide opportunity for the presentation of such petitions up to midnight of that day.

2. Where a statute requires that an act be performed a fixed number of days previous to a specified day, the last day should be excluded and the first day included in making the computation.

3. A nominating petition of one seeking to qualify as a candidate in an election to be held on November 2 may be filed as late as September 3."

The then Attorney General in the body of the opinion made the following comment:

"The above phrases are like the one now under consideration and in computing time, the last day shall be excluded and the first day included in making the computation. Under this rule Monday, where an election is held on Tuesday, would be the first day prior to the election, Sunday the second day prior thereto and Saturday the third day."

The reasoning in said opinion is believed to be logical and will therefore dispose of your first inquiry.

In this connection it may be pointed out that Section 5078-3, General Code, in substance provides that at any time not more than thirty days nor less than three days prior to the day of election the elector, who has made application and received the absent voter's ballot may appear before any board of deputy state supervisors of elections of this state or clerk thereof, or before any officer either within or without this state authorized to administer oaths and mark and seal his ballot in the manner therein provided.

Section 5078-5, General Code, indicates the time within which said ballots must be received in order to be counted which is before the hour for closing the polls on election day.

From the foregoing it is clear that when the election is on Tuesday the application may be made up to midnight of the Saturday preceding. Furthermore, under the provisions of Section 5078-3, General Code, the said vote must be cast either before a board of elections or some other officer authorized to receive the same on or before midnight on Saturday preceding an election on Tuesday.

You further inquire as to the proper form of application for absent voter's ballot.

Section 5078-1, supra, provides what said application shall contain. It must first state that the person applying is a qualified elector in some precinct within the county. Second, it must appear that he will be unavoidably absent from his home precinct on the day of the election. The section next requires that the application be made in writing, whether the applicant appears before the clerk in person or not. The statute does not prescribe any special form that said application shall contain, although the Secretary of State may prescribe forms for such purpose under Section 5047, General Code. As heretofore indicated Section 5078-1, supra, does expressly specify the things that must be stated therein. However, the section provides that after such clerk shall have satisfied himself that the applicant is a duly qualified voter in such precinct and is the person representing the name in which such application is made and that in a precinct where registration is required the applicant is complying with the law in regard to registration, he shall deliver to such voter or send him by registered mail, as the case may be, one of the absent voter's ballots as provided therein. The later provision is indicative of the fact that considerable discretion is vested in the clerk of the Board of Deputy State Supervisors of Elections in satisfying himself with reference to the matters contained in said application.

I am informed that the general practice has been for a form of application, prescribed by the Secretary of State, to be printed and distributed by the various clerks of the Board of Deputy State Supervisors of Elections. However, inasmuch as there is no specific requirement any application duly signed by the party applying and containing the essential facts required by Section 5078-1, supra, will be a legal application if the same contains the information required by Section 5078-1, supra.

You further inquire whether an application may be made by telegraph. While there is considerable confusion as to the correct meaning of "in writing" and also as to whether or not the communication by telegraph is made in writing, it is believed that the Sections of the Code here under consideration, do not contemplate application to be made by telegraph. This conclusion is compelled because of the provisions of Section 5078-6, General Code, which provides in substance that if the purported signature of an absent voter as the same appears on the envelope transmitted to the Board of Deputy State Supervisors of Elections does not in the judgment of the board correspond with the signature of such voter as the same appears on the application for such voter's ballot as previously filed, or the signature of the same on the precinct register when the registration is required by law, the board may refuse to deliver or count the ballot. As above stated this further provision shows clearly that it was the intent of the Legislature in providing for an absent voter's ballot and the application therefor that the said application should bear the signature of the applicant.

Based upon the foregoing in specific answer to your inquiries you are advised:

1. The latest day a voter can make application for an absent voter's ballot is Saturday at midnight when the election is to be held on the following Tuesday.

2. An application for an absent voter's ballot must be made in writing and state that the applicant is a qualified elector in the precinct in the county in which he desires to vote and will be unavoidably absent from such precinct on election day and request that he receive the absent voter's ballot and bear the signature of said applicant. In this connection you are advised that, under the provisions of Section 5047, General Code, the Secretary of State has prescribed a blank form of application, which in my opinion is a proper form, and one of which I herewith enclose.

3. In view of the provisions of Sections 5078-1 and 5078-8, General Code, construed together, an application cannot be made by telegraph for the reason that the law contemplates the application bearing the signature of the applicant.

4. There is no legal authority for an authorized agent or attorney to sign the elector's written application for an absent voter's ballot.

Respectfully,

EDWARD C. TURNER,

*Attorney General.*

2757.

CORPORATION—NOT FOR PROFIT—CERTIFICATE OF DISSOLUTION—  
FEE OF SECRETARY OF STATE.

*SYLLABUS:*

*The secretary of state is authorized and required to charge the sum of \$10.00 for filing the certificate of dissolution of a corporation not for profit.*

COLUMBUS, OHIO, October 19, 1928.

HON. CLARENCE J. BROWN, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your letter of October 17, 1928, as follows:

“Under date of September 24th I received a letter from The Ohio State Progressive Association, Inc., a copy of which is enclosed.

You will note request is made that your opinion be obtained on certain provisions of Section 176, G. C. The point of the writer is, I believe, that his belief is that a certificate of dissolution can be filed with a five dollar instead of a ten dollar filing fee.

Our reply to the letter mentioned was that it was not felt that your opinion was necessary on the point raised, that the fee on a certificate of dissolution is ten dollars.

In passing, your attention is directed to the fact that indirectly this point has been approved by your department inasmuch as the form varies the filing fee on the reverse thereof.

We are today informed that the Association has requested the Governor's office to obtain an opinion.”

The letter accompanying your communication is as follows:

“We beg to ask that you request the Attorney General for an opinion and ruling on the following:

‘Is the secretary of state required to accept a certificate of dissolution of a corporation not for profit, if the amount of the fee tendered therewith is in conformity with the provisions of Section 176-10 of the General Code?’

In connection therewith permit us to call attention to the following:

‘Section 79 (c) of the General Corporation Act—\* \* \* shall file in the office of the secretary of state \* \* \*.’

‘Section 176-10, G. C.—\* \* \* , or other documents, required by law to be recorded in the office of the Secretary of State.’

‘That Section 176-10 is subsequent to other provisions.’ ”