

2032.

## ELECTIONS—ABSENT VOTERS' BALLOTS—WHEN BALLOTS MUST BE RECEIVED BY DEPUTY STATE SUPERVISORS OF ELECTIONS.

## SYLLABUS:

*Under provisions of Section 5078-5 G. C. absent voter's ballots received by the deputy state supervisors of elections after the closing of the polls on election day cannot be counted.*

COLUMBUS, OHIO, December 5, 1924.

HON. THAD H. BROWN, *Secretary of State, Columbus, Ohio.*

Dear Sir:—

This will acknowledge receipt of your communication requesting the opinion of this department as follows:

"We desire your opinion upon the construction of Section 5078-5 G. C.

The question has arisen from Lucas County and the board has divided as to whether absent voter's ballots received by the deputy state supervisors of elections after the closing of the polls on election day can be counted."

Section 5078-5 G. C., among other things, provides:

" \* \* \* In all such precincts all envelopes containing absent voter's ballots deposited with or received by any board of deputy state supervisors of elections after the delivery by such board of election supplies to the several presiding judges as described above and before the hour for closing the polls on election day shall be opened by the board in its office before such close of the polls and tabulated according to the home precinct of the voters whose votes have been so deposited and received, each voter's ballot being accredited to his proper precinct and counted with the votes therein cast, the total vote thus arrived at in each precinct, shall be the vote of that precinct for that election. \* \* \* "

While the foregoing provision governs the receiving and counting of ballots outside registration precincts, a later provision in the same section for registration precincts is as follows:

"\* \* \* In all precincts of the state where registration is required by law all envelopes containing absent voter's ballots deposited with the board of deputy state supervisors of elections or received by mail before the delivery by such board of the election supplies to the several presiding judges of elections as provided in Section 5039 of the General Code shall be opened by said board of deputy state supervisors of elections and the identification envelopes containing the ballots shall be distributed and delivered to the presiding judges of the home precinct of each voter along with the other election supplies specified in such section 5039. Such presiding judges shall care for and deposit all such absent voter's ballots in the same manner as such ballots are cared for and deposited in precincts where there is no registration. In all such precincts if any such envelopes containing absent voter's ballots are received by the board of deputy state supervisors of

elections before the hour for the close of the polls on election day but too late to be distributed to the proper precincts the same shall be opened by the board of deputy state supervisors of elections and the ballots therein counted, accredited and prescribed as is done with ballots received after the distribution of supplies in precincts where no registration is required."

The privilege of voting by absent voter's ballot is purely a statutory proceeding. It 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 for and received the absent voter's supplies may appear before a proper officer and proceed to exercise this privilege by properly marking and mailing his ballot. It will thus be seen that ample time is provided for the exercising of this privilege.

The importance of having all ballots in at the close of the polls is also apparent. However, it would seem that the language of the statute is specific and controlling, when it provides for the counting of absent voter's ballots "received" by any board of deputy state supervisors of elections, "before the hour for closing the polls on election day."

It is also believed that this provision is to be strictly construed and the privilege thus exercised must be clearly within the provisions of the statute.

It is therefore my opinion that absent voter's ballots received by the deputy state supervisors of election, after the closing of the polls on election day, cannot be counted.

Respectfully,  
C. C. CRABBE,  
*Attorney General.*

2033.

APPROVAL, ELEVEN (11) OHIO CANAL LEASES, SEVEN (7) MIAMI AND ERIE CANAL LEASES, SIX (6) INDIAN LAKE LEASES, SIXTEEN (16) BUCKEYE LAKE LEASES, NINE (9) LAKE ST. MARYS LEASES, THREE (3) PORTAGE LAKE LEASES AND TWO (2) WATER LEASES.

COLUMBUS, OHIO, December 5, 1924.

*Department of Highways and Public Works, Division of Public Works, Columbus, Ohio.*

Gentlemen:—

I have your letter of December 1, 1924, in which you enclose the following leases, in triplicate, for my approval:

<i>Ohio Canal</i>	<i>Valuation</i>
James Meinhart, land at Massillon-----	\$1,866 67
The Ohio Power Co., pole line, Hocking Canal-----	1,800 00
C. G. Faries, Filling Station, Hocking Canal-----	1,666 67
W. S. Bloomberg, canal land at Massillon-----	1,566 67