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1. ABSENT WAR VOTER BALLOTS — AMENDED SENATE BILL 284, 95 GENERAL ASSEMBLY — APPLICATION — MAY LAWFULLY BE DELIVERED TO CLERK OF BOARD OF ELECTIONS OF COUNTY WHERE VOTER HAS VOTING RESIDENCE — PERSON OTHER THAN APPLICANT TO VOTE MAY APPLY FOR SUCH BALLOT — PURSUANT TO EITHER PARAGRAPH a, SECTION 1 OF ACT OR BY A RELATIVE, AUTHORITY PARAGRAPH b, SECTION 1 OF ACT.
2. APPLICATION FORM PRESCRIBED IN PARAGRAPH b, SECTION 1 OF ACT — IS FOR USE OF RELATIVES OF PERSONS ENTITLED TO CAST ABSENT WAR VOTER BALLOTS — OBTAINED FROM CLERK, BOARD OF ELECTIONS BY ANY PERSON AUTHORIZED BY RELATIVE SPECIFIED IN SAID ACT.

SYLLABUS:

1. An application for absent war voter ballots provided for by Amended Senate Bill No. 284 of the 95th General Assembly, may lawfully be delivered to the clerk of the board of elections of the county in which the person entitled to vote such ballots has a voting residence, by a person other than the applicant, regardless of whether such application is made pursuant to paragraph (a) of section 1 of said act, by a person entitled to vote under said act or by a relative of such person under authority of paragraph (b) of section 1 of said act.

2. The application form prescribed in paragraph (b) of section 1 of said act, for the use of relatives of persons entitled to cast absent war voter ballots, may be obtained from the clerk of the board of elections upon request therefor by any person authorized by any such relative specified in said paragraph, to request the same on his or her behalf.

Columbus, Ohio, June 22, 1944

Hon. Edward J. Hummel, Secretary of State
Columbus, Ohio

Dear Sir:

This will acknowledge receipt of your recent communication, which reads as follows:

"I am writing you to request an opinion on the interpretation of paragraph a, Section 1, of Amended Senate Bill No. 284, a copy of which is hereto attached.

The question which has been presented to this office by various boards of elections, is as follows:

'When a member of the armed forces, or others qualified under Amended Senate Bill No. 284, is making a written application for a ballot, can any person or group of persons, other than the applicant, present this written application, together with other applications, to the Clerk of the Board of Elections, or must they be delivered in person or sent by mail direct to the Clerks of the various boards of elections?'

I would also like to have your opinion on the interpretation of paragraph b, Section 1, of Amended Senate Bill No. 284, as to whether or not applications for ballots, made by relatives of the member of the armed forces or persons eligible under Amended Senate Bill No. 284, have to be applied for to the Clerk of the Board of Elections by the relatives themselves, or whether such applications can be obtained by any person or group of persons, not relatives, as set out in paragraph b, Section 1, and also as to whether or not any person or group can have the relatives of any member of the armed forces, or other persons qualified under Amended Senate Bill No. 284, make out such applications and any other person or group of persons then deliver such completed applications to the clerk of the board of elections?"

Section 1 of Amended Senate Bill No. 284 of the 95th General Assembly provides that absent war voter ballots may be obtained by persons entitled to vote the same by either of two methods. The pertinent language with respect thereto is as follows:

"Such absent war voter ballots may be obtained by applying therefor to the clerk of the board of elections of the county in which such person's voting residence is located in one of the following ways:

(a) Such person may make written application therefor. He may personally deliver such application to the clerk or may mail or otherwise send same to the clerk. Such application need not be in any particular form. It need only contain words which, liberally construed, indicate that he requests such ballots, that he is engaged in one of the services as hereinabove specified, that he has a residence in Ohio, and sufficient information to enable the clerk to determine the precinct in which it is located. If he desires that such ballots be mailed

to him such application shall state the address to which they should be mailed.

(b) Application to have such ballots mailed to such person may be made by the spouse, father, mother, grandparent, father-in-law, mother-in-law, brother or sister of the whole blood or half blood, son, daughter, adopting parent, adopted child, step-parent, step-child, uncle, aunt, nephew or niece of such person. Such application shall be upon a form prescribed by the secretary of state and provided by the clerk upon request therefor, and shall be subscribed and sworn to under oath by such applicant. Such application shall contain: * * *."

The answer to your first question requires a consideration of the language contained in paragraph (a). It will be noted that such language provides that the person entitled to vote such ballot may deliver such application to the clerk or may mail *or otherwise* send the same to the clerk. From this it follows that the application may be delivered by the individual member of the armed forces or other specified service to the clerk through the agency or method selected and deemed to be the most convenient by him. It would, therefore, appear that a written application for an absent war voter ballot which is made by any of the persons enumerated in the first paragraph of section 1 of the act may be delivered to the clerk by any person other than the applicant.

I come now to your second question pertinent to which are the provisions of paragraph (b) of section 1, above quoted. While said language expressly provides who may make application for absent war voter ballots on behalf of a person entitled to vote the same, it is not specific as to who may obtain the prescribed form of the application from the clerk of the board of elections. In this respect it merely recites that such application shall be provided by the clerk "upon request therefor".

From a reading of the entire act it is apparent that the General Assembly intended by the enactment thereof, to afford those entitled to vote by absent war voter ballot every opportunity to do so in the most convenient manner. In order to bring the ballot to those who are serving in or attached to our armed forces, our lawmaking body has said that any relative may, on their behalf, make application therefor.

If it was the intention of the General Assembly to require the

relative-applicant to make the request for the application personally, it could have so stated in very few words. Having failed to do so leads to the conclusion that that body did not intend to place such restriction upon the request for such application. Furthermore, since the act was definitely designed to facilitate voting by persons serving in or with the armed forces, who are absent from their voting residences, and to this end permit the applications for ballots to be voted by them to be made by their relatives, it would appear that a construction which would assist in accomplishing the aims of the act must be adopted.

It is a fundamental rule that a statute should not be given a construction so technical or narrow as to defeat or hinder a right granted under it. Courts have repeatedly declared that statutes are to be given a fair and reasonable construction in conformity with their general purpose in order that such purpose may be effectuated. In order to say that the act requires the request for an application to be made by a relative in every case, it would be necessary to add words thereto which the General Assembly did not see fit to incorporate therein.

For these reasons I am unable to bring myself to the conclusion that the only persons who may request the applications provided for in paragraph (b) are the relatives enumerated therein.

However, since said paragraph provides that only the relatives therein designated may make application for absent war voter ballots on behalf of those persons entitled thereto, it is scarcely conceivable that the General Assembly intended that such applications should be available to any person making request therefor. Obviously, application for an absent war voter ballot in the hands of someone who is in no way related to a person entitled to vote such a ballot, can be put to no use unless the same is turned over to a relative of such person. Certainly there could be no purpose in furnishing an application to any person requesting the same regardless of whether or not he had any use therefor. It should never be presumed that the Legislature intended the doing of anything which is useless and purposeless. The fact that the act in question was designed to facilitate the voting by persons serving in or with the armed forces and for such reason should be given a liberal interpretation does not, however, authorize a construction of any part thereof which would extend beyond the intention of the General Assem-

bly as indicated by the natural import of the language used.

On the other hand, since paragraph (b) of section 1 does not in express terms recite that the request for applications may be made only by the relatives enumerated therein, it seems to me that if the act is given a reasonable and sensible construction, any person making such request on behalf and at the instance of a relative entitled to make the application, should be given an application.

It is conceivable that in many cases it might be inconvenient for a relative to request such application in person or in writing. In such case, it seems that a fair interpretation of the statute would authorize the clerk to furnish such an application to a person requesting the same on behalf of a relative.

With respect to the consideration of convenience in the interpretation of a statute, it is stated in 37 O. Jur. 636, 637:

“* * * However, it is to be assumed that the legislature aims to promote convenience. It may not be presumed to have intended to enact a law producing an opposite effect. Accordingly, where great inconvenience will result from a particular construction, that construction is to be avoided, unless the meaning of the legislature be plain. Thus, convenience may be taken into consideration by the courts in interpreting a statute which is ambiguous and susceptible of two constructions. Moreover, the interpretation of the statute reached by the courts by the application of other principles of construction has been considered bolstered, in particular cases, by the convenience thereof, or by the inconvenience which would result from a contrary construction.”

It would therefore appear that when a person requesting an application to be completed by a relative, furnishes information to the clerk that such application is to be used by a particular relative to a person entitled to an absent war voter ballot and furnishes the name and address of both relative and the persons on whose behalf the application is to be made, it would be the clerk's duty to give such application to the person requesting it.

You also inquire whether an application when completed by a relative may be delivered to the clerk by any other person or group of persons.

Since the act does not specify the method by which such applications shall be delivered to the clerk, it seems to me that any method employed by the relative would suffice.

That the act itself contemplates a return of such application to the clerk by mail or other delivery is evident from the sentence which appears in section 1 immediately following paragraph (b) of said section. Said sentence reads:

“Applications to have absent war voter ballots mailed to an elector, as provided for in this section, shall not be valid if dated, postmarked or received by the clerk of the board of elections earlier than the first day of January, 1944, or if delivered to such clerk later than 12:00 noon of Saturday, the fourth day of November, 1944.”

The above sentence which deals with the time during which applications may be mailed or delivered to the clerk has for its subject “applications as provided for in this section”. Since the applications to be executed by relatives are provided for in section 1, it is manifest that the General Assembly intended that such applications could be returned to the clerk by mail or other delivery. From this it would appear that when completed by a relative in the manner provided by the act, such application may lawfully be delivered to the clerk by a person other than the relative who completed the case.

The fact that the act is silent as to the mode of delivery of the applications prescribed by paragraph (b), while paragraph (a) in express terms recites that applications made under the authority thereof may be delivered in person by mail, or otherwise, does not operate as a limitation with respect to the method or manner in which the applications provided for in paragraph (b) may be delivered. While it may be that the General Assembly, by use of the words in paragraph (a) intended to allow a broad latitude in the manner of the delivery of the applications provided for in said paragraph, such words nevertheless must be considered as words of limitation. Stated otherwise, if the General Assembly had made no provision in paragraph (a) relative to the manner in which the applications provided for therein could be delivered, the answer to your first question would have been the same.

Furthermore, it is a fundamental rule of law that when the statute

authorizes an act to be done and the method by which such authority is to be exercised is not defined, the authorized act may be done in any reasonable manner not prohibited by or inconsistent with law.

In view of the foregoing, you are advised that in my opinion:

1. An application for absent war voter ballots provided for by Amended Senate Bill No. 284 of the 95th General Assembly, may lawfully be delivered to the clerk of the board of elections of the county in which the person entitled to vote such ballots has a voting residence, by a person other than the applicant, regardless of whether such application is made pursuant to paragraph (a) of section 1 of said act, by a person entitled to vote under said act or by a relative of such person under authority of paragraph (b) of section 1 of said act.

2. The application form prescribed in paragraph (b) of section 1 of said act, for the use of relatives of persons entitled to cast absent war voter ballots, may be obtained from the clerk of the board of elections upon request therefor by any person authorized by any such relative specified in said paragraph, to request the same on his or her behalf.

Respectfully,

THOMAS J. HERBERT

Attorney General