

6057

BALLOTS—ABSENT VOTERS’—REGISTRATION AND APPLI-  
CATION—MEMBERS OF ARMED FORCES.

Columbus, Ohio, May 7, 1943.

SYLLABUS :

The registration and application for absent voters’ ballots by members of the  
armed forces, discussed.

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

Dear Sir :

You have submitted for my consideration a suggested form to be  
used by members of the Armed Forces of the United States as an appli-  
cation for an absent voter’s ballot and as a registration by mail. My  
opinion regarding the legality of such form, together with any recom-  
mendations I may have with respect thereto, is requested.

Such form is as follows :

“As a member of the Armed Forces of the United States,  
I desire to vote at the ..... Election to be held  
Primary or General  
....., 19..... If my registration is required or  
needs correction consider data here detailed in the sequence neces-  
sary to qualify me as an elector entitled to an absentee ballot for  
which I now apply.

I have been a resident of the State of Ohio for at least one year,  
and of ..... County 30 days, and of .....  
Precinct 28 days next preceding this ..... Election,  
and I am a qualified elector therein. I entered my country’s  
service on ..... My voting residence is  
..... I am a native born .....  
Naturalized citizen ..... If naturalized, give date  
Place naturalized. .... Place and date of birth. ....  
‘I, being duly sworn on oath (or affirmation), do swear (or affirm)  
that all the information herein set forth is true; and that I am  
legally qualified to vote.’  
Signature of Applicant.....  
Date .....  
Signature of Attesting Officer.....

Rank :

(IMPORTANT) If a change in address, notify your Board of Elections.

Mr. ....

Address .....

Mr. ....

Address .....

will, I believe, vouch for the facts herein set forth.

Send Ballots to me, at following address:

.....  
.....

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Ohio Boards of Elections are directed  
to honor this form of application  
EDWARD J. HUMMEL,  
Secretary of State."

Section 4785-141, General Code, as amended by the 94th General Assembly (119 O. L., 265) contains provisions for the registration and voting of members of the Army, Navy and Militia. Said section reads:

"Whenever any qualified voter of this state shall be on active duty in the land or naval forces of this state or of the United States, in the army or navy or militia thereof, and by reason thereof is unavoidably absent from his election district on election day, such absent voter shall be entitled to vote as fully as if he were present at his place of residence in the same manner herein provided for other absent voters. If such member of the army or navy or militia is a legal resident of any subdivision of the state where registration is required said person, if not duly registered, shall be registered by mail or in person and allowed to cast an absent voter's ballot in the same manner herein provided for other absent voters. Provided, that any affidavit required in connection with the registration of such person and the voting of an absent voter's ballot may be made or subscribed before a commissioned officer of the land or naval forces. The secretary of state, in such cases, if the number of such voters exceeds one hundred, shall have authority to organize a staff to visit such headquarters and to care for the casting, sealing and return of such absent voters' ballots to their appropriate counties."

It will be noted that the above section in no way prescribes the manner in which the registration by mail provided for therein is to be effected. The statute merely recites:

"If such member of the army or navy or militia is a legal resident of any subdivision of the state where registration is required, said person, if not duly registered, shall be registered by mail or in person \* \* \*."

Other than to permit a member of the Army, Navy or Militia who

is on active duty, to register by mail, the section contains no language which might in any way indicate that the General Assembly intended a different form of registration for soldiers and sailors than that provided generally. Obviously, therefore, if a person who falls within the provisions of Section 4785-141, chooses to register by mail he must comply with all the requirements of the statutes dealing with registration of voters.

In this connection, your attention is directed to Sections 4785-42 and 4785-43, of the General Code, which read as follows:

“Section 4785-42:

The registration forms shall contain spaces for inserting the following information concerning the applicant for registration:

1. The full name, including the first and last names and middle name, if any. In the case of married women the Christian name of said woman shall be entered prefixed by the word ‘Mrs.’ In the case of single women the Christian names shall be prefixed by the word ‘Miss’.

2. The place of residence and postoffice address including the name of the street and street number, if any. If the applicant resides in a hotel, apartment or tenement house, or institution, then such additional information shall be included as will give the exact location of said applicant’s place of residence.

3. The applicant’s statement that he is over twenty-one years of age; or that he will be twenty-one years of age on or before the day of the next general election; that he is a citizen of the United States and the State of Ohio; that he has resided in the state for at least one year, in the county thirty days and in the precinct twenty-eight days.

4. The applicant’s statement that he is a native born or naturalized citizen; if a citizen by naturalization when and in what court naturalized.

5. Place of residence from which last registered; place for remarks giving additional information for purposes of identification.

6. Immediately below the foregoing information shall be printed the following oath with a space for the signature or mark of the applicant:

‘I, . . . . ., being duly sworn on oath (or affirmation), do swear (or affirm) that the statements herein contained

are, to the best of my knowledge and belief, true; and that I am legally qualified to vote.'

.....  
Signature of applicant

Subscribed and sworn to before me this ..... day  
of ....., 19.....

.....  
Signature of person taking affidavit

7. Place for subsequent changes in the address of the applicant.

8. Provision shall be made either on the front or back of the registration cards or loose leaf pages for recording the fact that registered voters have or have not voted at each general election. Such record shall indicate whether such voter voted at the primary election and his political party affiliations if any. Such facts shall be recorded, as determined by the rules and regulations of the secretary of state, by the precinct officials as the votes are cast."

"Section 4785-43:

Any eligible person applying for registration shall answer all such questions as are provided for in the registration forms as hereinbefore set forth. Such answers shall be recorded on both the original and the duplicate registration forms, after which said forms shall be compared and all errors corrected, and the applicant shall sign both the original and the duplicate forms under oath. Any applicant who is unable to sign his name shall make a cross, which shall be certified by the signing of the name of the applicant by the person filling out the registration form, who shall add his own signature, and shall also record on such form the date of birth and such other information as will aid in his identification."

It will be noted that the first of the two above quoted statutes, which provides for the contents of registration forms, requires the full name of the applicant, including the first, last and middle name, if any, and also requires the prefix "Miss" or "Mrs.," as the case may be, to the names of women applicants. It seems to me that your form should call attention to this requirement.

It is also noted that the form in question does not contain space for the applicant to state the place of residence from which he or she last registered. This, it will be observed, is required by the statute.

The statute requires a naturalized citizen to state the name of the court in which he was naturalized. Your form merely provides for a statement of the place where he was naturalized.

Your attention is also invited to the fact that the statute requires the oath, in the form set out therein, to be printed immediately below the information contained in the form. The language of the oath set out in your form is not identical with that required by the statute.

It should also be pointed out that the oath on the form submitted by you is not accompanied by a jurat. This, I feel is important. If an affidavit shows on its face that it is not sworn to before a person authorized by law to administer oaths, it has no legal force. While the jurat is simply a certificate or statement evidencing the fact that the affidavit was properly made before a duly authorized officer, and strictly speaking, is not a part of the affidavit, it has been held that unless it is shown by outside evidence that an affidavit was properly sworn to, the failure to attach a jurat thereto is fatal.

I come now to consideration of the provisions of Section 4785-43, General Code. Said section in express terms requires the answers to the questions set out in section 4785-42, General Code, to be recorded in duplicate and contains the further requirement that the applicant for registration shall sign both the original and duplicate form. Therefore, it is at once apparent that the form adopted for the registration of persons in the armed service by mail must be filled out and signed in duplicate.

Since the sample form submitted by you contemplates that the application for registration and the application for an absent voter's ballot be made at the same time, it becomes necessary to ascertain the requirements of law regarding the time when such respective applications must be made. Pertinent thereto are Section 4785-39, General Code, and Section 4785-135, General Code, which read as follows:

“Section 4785-39:

Persons qualified to register or to change their registration may register or change their registration at the office of the board at any time such office is open except twenty-eight days preceding or ten days following a primary or general election, provided that any registered elector who removes from one precinct to another in the same political subdivision after the close of such registration period shall have the right to vote at the next succeeding election in the precinct from which he moved, wherein he was legally registered.”

“Section 4785-135:

Such elector, not more than thirty days nor later than 6:30 p. m. of the Thursday preceding the date of a primary or general

election, or twelve o'clock noon of the third day preceding a special election held on another date, shall make application in person or in writing to the clerk of the board of such county, for any official ballot to be voted at such election. The application shall be made on a blank to be furnished by the clerk of the board of the county in which the applicant is an elector and shall be substantially in the following form:

APPLICATION FOR ABSENT VOTER'S BALLOT

Ballot to be voted at ..... on the..... day of ....., 19.....

State of Ohio, }  
County of ..... }

I, ....., do solemnly swear that I have been a resident of the State of Ohio for one year, of the County of ..... for thirty days, and of the ..... Precinct of the ..... Ward of the City or Township of ..... twenty-eight days next preceding this election, and that I am a duly qualified elector entitled to vote at said election; that I will be unavoidably absent from the county and that such absence from the county will be at a distance of more than fifty miles from said precinct, and I hereby make application for an official ballot or ballots to be voted by me at such election, and that I will return said ballot or ballots to the officer issuing same, before the date of said election. The reasons for my unavoidable absence are.....

Date ....., Residence ....., City .....,  
(Street and Number)

Signed .....

Subscribed and sworn to before me this..... day of ....., 19.....

Signed .....

.....  
Title of Officer

If the application is made for a primary election ballot, such application shall designate the name of the political party with which the applicant is affiliated."

A reading of the above sections discloses at once that registration may not be applied for after the twenty-ninth day preceding a primary or general election, and that an application for an absent voter's ballot cannot legally be made earlier than the thirtieth day preceding a primary or general election. Therefore, if the application for registration and the application for an absent voter's ballot are both made on the same form, such form must, in order to meet the requirements of law, be in the hands

of the Clerk of the Board of Elections not earlier than the thirtieth day and not later than the twenty-ninth day before an election. In other words, the application, if made for both registration and absent voter's ballot at the same time, must reach the Board of Elections either on the thirtieth or the twenty-ninth day before a primary or general election.

A further objection to both applications being on the same form reveals itself immediately when the language of the affidavit set forth in Section 4785-135 is read. An applicant for an absent voter's ballot is required to state under oath before such ballot can be secured, that he is a duly qualified elector entitled to vote at the election for which he desires a ballot. Obviously, a person living in a registration city who is not registered is not a duly qualified elector. Therefore, if he is applying for registration simultaneously with and on the same form on which his application for a ballot is made, he is not a duly qualified elector entitled to vote at the time the application for registration and a ballot is made. It must be borne in mind that the signing of the registration form provided for in Section 4785-43, General Code, is not tantamount to registration. It will be noted that said section provides that the person applying for registration shall sign, etc. It would therefore appear that the registration is not complete, at least until the application is accepted and recorded with the Board of Elections.

In view of the above, you are advised that in my opinion the application for registration must be on a form separate from that upon which application for an absent voter's ballot is made, must be in duplicate, and the contents thereof must be in strict conformity with the provisions of Section 4785-42, General Code.

The application for absent voter's ballot should be substantially in the form set out in Section 4785-135. The observations above made with respect to the affidavit attached to the registration form are likewise applicable to the affidavit attached to the application for absent voter's ballot.

Respectfully,

THOMAS J. HERBERT,  
Attorney General.