

# OFFICE OF THE ATTORNEY GENERAL

97-00209



**BILL PRYOR**  
ATTORNEY GENERAL  
STATE OF ALABAMA

**JUN 19 1997**

ALABAMA STATE HOUSE  
11 SOUTH UNION STREET  
MONTGOMERY, ALABAMA 36130  
AREA (334) 242-7300

**NOTE:** Section 17-10-5 has  
been amended by Act  
No. 99-388

Honorable F. Lenton White  
City Attorney  
P.O. Box 2128  
Dothan, AL 36302

Elections - Absentee  
Voting - Absentee Ballots

Absentee ballots must be  
mailed to a voter's resi-  
dence address, except that  
military personnel, their  
spouses, and dependents  
may have their ballots  
mailed to their active  
duty addresses.

Dear Mr. White:

This opinion is issued in response to your request  
for an opinion from the Attorney General.

## QUESTIONS

1. What responsibility does the absentee election manager have for providing absentee ballots to persons who fall within the terms provided in ALA. CODE § 17-10-3(a), (b) (1975), and who do not receive mail at their legal residence?
2. Do voters, such as college students and military personnel away from home, have a right to receive an absentee ballot if the voters will not be able to receive mail at their legal residence?

FACTS AND ANALYSIS

The procedures for voting by absentee ballot were amended by Act No. 96-885, which was precleared by the U.S. Justice Department on February 4, 1997. The persons who may vote by absentee ballot are set forth in ALA. CODE § 17-10-3(a) and (b) (1975), as amended, which provides as follows:

(a) Any qualified elector of this state (i) who will be out of the county or the state on all of the following days: election day, the Saturday ten (10) days prior to the date of said election, and the Tuesday of the week immediately preceding the date of said election, or (ii) who has any physical illness or infirmity which prevents his or her attendance at the polls, whether he or she is within or without the county on the day of the election, or who works on a shift which has at least ten hours which coincide with the hours the polls are open at his or her regular polling place, (iii) who is enrolled as a student at an educational institution located outside the county of his or her personal residence attendance at which prevents his or her attendance at the polls, or (iv) who is a member of or spouse or dependent of a member of the armed forces of the United States, or (v) who has been appointed as an election officer or named as a poll watcher at a polling place other than his or her regular polling place may apply for and vote an absentee ballot by mail or by hand delivery, as provided in Sections 17-10-5 and 17-10-9, in any primary, general, special or municipal election, provided he or she makes application in writing therefor not less than five days prior to the election in which he or she desires to vote as authorized in this chapter.

(b) An applicant for an absentee ballot who is a member of the armed forces of the United States, including the Alabama

National Guard, United States Naval Reserves, the United States Air Force Reserves and the United States Military Reserves on active duty training or an applicant who is the spouse of any member of the armed forces may make application for an absentee ballot by filling out the federal postcard application form, authorized and provided for under the provisions of 'The Federal Voting Assistance Act of 1955,' Public Law 296, Chapter 656, H.R. 4048, approved August 8, 1955, 84th Congress 1st Session.

The absentee election manager may provide the absentee ballot in one of two ways as set forth in ALA. CODE § 17-10-5 (1975), as amended, which provides in pertinent part:

(a) Upon receipt of an application for an absentee ballot as provided in Section 17-10-3(a) if the applicant's name appears on the list of qualified voters in the election to be held or if the voter makes an affidavit for a challenged vote, the absentee election manager shall furnish the absentee ballot to the applicant by: (1) forwarding it by United States mail to the applicant's or voter's residence address or (2) by handing the absentee ballot to the voter in person or, in the case of emergency voting, his or her designee in person.

(Emphasis added.)

This provision only allows the absentee election manager to mail the absentee ballot to the voter's residence address or hand the ballot to the voter in person. Prior to the amendment of Section 17-10-5 by Act No. 96-885, the absentee ballot could also be mailed to the "address where the voter regularly receives mail." The deletion of this language indicates that the Legislature clearly intended that the absentee ballot should only be mailed to the voter's residence address. The amendments of the absentee balloting procedures were intended to prevent the abuse arising from absentee ballots that were being applied for and cast through the

mail by "vote brokers." The current system may make it more difficult for some voters to vote by absentee ballot; however, no system can guarantee that every voter, regardless of the exigencies of their personal and business lives, will be able to vote.

A voter who does not receive mail at his or her residence address has the option of requesting the ballot in person. No exception is made for college students. A college student's residence address is the address in the county where his parents or guardians reside and upon which his voter registration is based unless the student has affirmatively established a new residence and changed his voter registration to his college address. Quarterly Reports of the Attorney General, Vol. 146, page 22. An absentee ballot for a college student must be mailed to the student's residence address. If that is the address of the parents or guardian, the ballot could then be mailed to the student. Moreover, the student could make arrangements to request the ballot in person.

It is the opinion of this office that absentee ballots for military personnel, their spouses, and dependents may be mailed to their active duty address rather than their residence address. This opinion is based upon provisions of "The Federal Voting Assistance Act of 1955," as amended and which appear at 42 USCS § 1973ff, et seq. Section 1973ff-3 provides:

To afford maximum access to the polls by absent uniformed services voters and overseas voters, it is recommended that the States--

(1) use the official post card form for simultaneous voter registration application and absentee ballot application;

. . . .

(7) assure that absentee ballots are mailed to absent uniformed services voters and overseas voters at the earliest opportunity. . . .

The term "absent uniformed services voter" includes a spouse or dependent and is defined in 42 USCS § 1973ff-6 as:

(A) a member of a uniformed service on active duty who, by reason of such active duty, is absent from the place of residence where the member is otherwise qualified to vote;

(B) a member of the merchant marine who, by reason of service in the merchant marine, is absent from the place of residence where the member is otherwise qualified to vote; and

(C) a spouse or dependent of a member referred to in subparagraph (A) or (B) who, by reason of the active duty or service of the member, is absent from the place of residence where the spouse or dependent is otherwise qualified to vote. . . .

Alabama has adopted the use of the federal post card application form. ALA. CODE § 17-10-3(b) (1975). This form requires the military voter to give his residence address in the State of Alabama and provides for the mailing of the ballot to the voter at an official governmental or military address. Based upon the foregoing, military personnel, their spouses and dependents who, by reason of active duty, are absent from their place of residence may have their absentee ballot mailed to them at an address other than their residence address.

#### CONCLUSION

Absentee ballots must be mailed to a voter's residence address, except that military personnel, their spouses, and dependents may have their ballots mailed to their active duty addresses.

Honorable F. Lenton White  
Page 6

I hope this opinion answers your questions. If this office can be of further assistance, please contact Brenda F. Smith of my staff.

Sincerely,

BILL PRYOR  
Attorney General  
By:



JAMES R. SOLOMON, JR.  
Chief, Opinions Division

BP/BFS  
W/6.97/f