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STATE OF ALABAMA  
OFFICE OF THE ATTORNEY GENERAL

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Honorable Yvonne Kennedy  
Member, Alabama House of Representatives  
1205 Glennon Avenue  
Mobile, AL 36603

Elections - Absentee Ballots - Absentee  
Voting - Jails

Persons detained in a detention facility in Alabama who are qualified to vote may apply for and cast an absentee ballot pursuant to the provision that allows a person who has a physical illness or infirmity that prevents his or her attendance at the polls on election day to vote absentee.

Dear Representative Kennedy:

This opinion of the Attorney General is issued in response to your request.

QUESTION

Whether a person who is 18 years of age and older, who is being detained in an Alabama detention facility, i.e., county or municipal jail or youth detention center, who is registered to vote or eligible to register to vote in the State of Alabama and has not been convicted of a felony, can apply for and/or cast an absentee ballot.

FACTS AND ANALYSIS

Persons entitled to vote in the State of Alabama include every citizen of the United States who has attained the age of eighteen years, who resides in this State, who has not been convicted of a felony involving moral turpitude, unless that person's civil and political rights have been restored, and who has

registered to vote. ALA. CONST. amend. 579; ALA. CODE §§ 17-3-9, 17-3-10 (1995).

An absentee ballot may be cast by a person entitled to vote (a qualified elector) pursuant to the provisions of section 17-10-3 of the Code of Alabama. This section provides six (6) reasons for which a qualified elector may vote by absentee ballot and states, in pertinent part, as follows:

(a) Any qualified elector of this state (1) 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 (2) 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 (3) 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, (4) 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 (5) who is a member of or spouse or dependent of a member of the armed forces of the United States, or (6) 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.

ALA. CODE § 17-10-3 (Supp. 2000).

No provision of section 17-10-3 of the Code of Alabama specifically authorizes a qualified elector detained in a detention facility in the State of Alabama to vote by absentee ballot. An elector who is a detainee in a detention facility located in a county other than the county of his or her residence would satisfy the requirements of reason (1) because he or she would be out of the county on election day and the Saturday ten days prior to the election. A detainee who is in a facility located in his or her county of residence would not

meet this requirement and would not, without more, be eligible to cast an absentee ballot.

The United States Supreme Court in a 1974 case reviewed absentee ballot statutes in New York that were similar to the current Alabama statutes in which the Court declared the New York statutes arbitrary and a denial of equal protection. *O'Brien v. Skinner*, 414 U.S. 524 (1974). The Supreme Court found that the New York statutes denied persons detained in counties of their residences the right to vote by absentee ballot, while allowing the right to vote by absentee ballot to persons similarly detained in counties outside their residence. *Id.* at 529. The Court found that detainees should be allowed to vote under the provision for illness or physical disability, reasoning that a detainee was physically disabled from voting in person. *Id.* at 527. Similarly, the Alabama absentee statutes deny persons detained in counties of their residence the right to vote by absentee ballot while allowing detainees in counties outside their residence the right to vote by absentee ballot. Based upon the United States Supreme Court's analysis in *O'Brien*, it is the opinion of this Office that detainees in a detention facility in Alabama who are eligible to vote should be allowed to cast absentee ballots under the provision that they have a physical illness or infirmity that prevents their attendance at the polls.

#### CONCLUSION

Persons detained in a detention facility in Alabama who are qualified to vote may apply for and cast an absentee ballot pursuant to the provision that allows a person who has a physical illness or infirmity that prevents his or her attendance at the polls on election day to vote absentee.

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

Sincerely,

BILL PRYOR  
Attorney General

By:



CAROL JEAN SMITH  
Chief, Opinions Division