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STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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Absentee Ballots – Elections – Absentee
Voting – Challenged Ballots

If a voter who requested an absentee ballot signs an affidavit stating that the voter did not receive the ballot, the absentee election manager may provide the voter with a replacement absentee ballot. The affidavit and documentation by the absentee election manager should be attached to the voter's application for an absentee ballot. If one voter casts multiple absentee ballots, none of those ballots should be opened or counted.

A person who applied for an absentee ballot and claims that he did not receive the ballot or that it was lost and who is able to go to the polling place on election day is entitled to vote by challenged ballot at the polling place.

Dear Mr. Bennett:

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

QUESTION 1

If after applying for an absentee ballot the voter claims he or she did not receive the ballot or that it was lost:

May the absentee election manager arrange to supply the voter with a replacement ballot and, if so, what precautions should be taken?

FACTS AND ANALYSIS

Absentee ballots are delivered to voters pursuant to the provisions of section 17-10-5 of the Code of Alabama, which provides, in pertinent part, as follows:

(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 The absentee election manager shall mail any absentee ballot requested to be mailed as provided in Section 17-10-3(a) no later than the next business day after an application has been received unless the absentee ballots have not been delivered to the absentee election manager. If the absentee ballots have not been so delivered, the absentee election manager shall hold all requests until the ballots are delivered and shall then respond by placing ballots in the mail no later than the next business day.

ALA. CODE § 17-10-5(a) (Supp. 1999). Paragraph (b) of section 17-10-5 also provides:

Before the polls open at any election on election day, the absentee election manager shall effectuate the delivery to the election officers of each polling place a list showing the name and address of every person whose name appears on the official list of qualified electors for the polling place who applied for an absentee ballot in the election. The name of the person who applied for an absentee ballot shall be stricken

from the list of qualified electors kept at the polling place, and the person shall not vote again.

ALA. CODE § 17-10-5(b) (Supp. 1999).

Neither section 17-10-5 nor any other provisions of the Code of Alabama provide a procedure for supplying a replacement absentee ballot if a voter fails to receive the ballot through the United States mail. It is our understanding that it has been the general practice to supply a voter with a new absentee ballot if the voter who requested the absentee ballot signs an affidavit stating that the voter did not receive the ballot. This procedure has a safeguard because, if multiple absentee ballots are returned in that voter's name, none of the ballots will be counted. Section 17-10-3(o) of the Code provides as follows:

Notwithstanding any other provision of otherwise applicable law, in the event more than one absentee ballot is cast in the name of the single voter, whether any such multiple ballot is cast by mail or at an on-site balloting location, none of the affidavit envelopes containing said multiple ballots shall be opened, and none of said multiple ballots shall be counted, except in the event of an election contest, upon the order of the election contest tribunal. Upon the conclusion of an election contest or, in the event no such contest is filed, upon the expiration of time for filing such a contest, said multiple ballots shall be provided to the district attorney, with photocopies provided to the state Attorney General, for such investigation, prosecution or other action as may be appropriate under applicable law.

ALA. CODE § 17-10-3(o) (Supp. 1999). Multiple absentee ballots cast by one person will not be counted, and those ballots should be provided to the District Attorney and the Attorney General for investigation and possible prosecution.

To assist the absentee election manager in keeping a record of the absentee ballots, the affidavit filed by the voter should be attached to the voter's application for an absentee ballot along with a notation by the absentee election manager documenting that a new ballot was supplied to the voter and the date supplied. This procedure would allow a voter to cast an absentee ballot if the original ballot were lost in the mail, but would not allow multiple absentee ballots cast by a voter to be counted.

CONCLUSION

If a voter who requested an absentee ballot signs an affidavit stating that the voter did not receive the ballot, the absentee election manager may provide the voter with a replacement absentee ballot. The affidavit and documentation by the absentee election manager should be attached to the voter's application for an absentee ballot. If one voter casts multiple absentee ballots, none of those ballots shall be opened or counted.

QUESTION 2

If after applying for an absentee ballot the voter claims he or she did not receive the ballot or that it was lost:

May the voter vote by challenged ballot at his or her polling place on election day?

FACTS AND ANALYSIS

Pursuant to section 17-10-5(b), as cited in Question 1, a person who has applied for an absentee ballot shall have his name stricken from the list of qualified voters kept at the polling place, and the person shall not vote again. This language creates a presumption that a person who has applied for an absentee ballot has voted by absentee ballot. A challenged ballot is available to those persons who offer to vote at the polls who are alleged not to be entitled to vote. ALA. CODE § 17-12-1 (1995). A person who applied for an absentee ballot and who wanted to vote in person at the polling place because he claims that he did not receive the ballot or that it was lost would be entitled to vote by challenged ballot at the polling place. A challenged voter files an oath or affidavit stating that he is duly qualified and entitled to vote. ALA. CODE § 17-12-3 (1995). A copy of this affidavit is forwarded to the district attorney to determine whether the voter committed perjury by making the oath falsely. ALA. CODE §§ 17-12-4, 17-12-6 (1995).

A person who applies for an absentee ballot is stating in his or her application that he or she is unable to vote in person at the polls on election day for one of the reasons provided in section 17-10-3. It is possible that the circumstances that required the person to request an absentee ballot have changed and that person will be able to go to the polling place on election day to vote by challenged ballot.

CONCLUSION

A person who applied for an absentee ballot and claims that he did not receive the ballot or that it was lost and who is able to go the polling place on election day is entitled to vote by challenged ballot at the polling place.

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:



CAROL JEAN SMITH
Chief, Opinions Division

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