



WILLIAM J. SCOTT

ATTORNEY GENERAL
STATE OF ILLINOIS
500 SOUTH SECOND STREET
SPRINGFIELD

October 21, 1972

FILE NO. S-516

**ELECTIONS:
Absent Voters -
Federal Voting Rights Act
of 1970**

Honorable Richard B. Ogilvie
Governor of Illinois
State Capitol
Springfield, Illinois 62706

Dear Governor Ogilvie:

I have your letter of October 2, 1972 wherein you
state:

"I am enclosing for your consideration a copy of
correspondence received from the Attorney General
of the United States concerning the implementation
in Illinois of the Voting Rights Act Amendments of
1970. You will note that it is his position that
Illinois election law is not in conformity with
federal law in two respects: (a) we have not pro-
vided a procedure for absentee registration as re-
quired in 42 USC Sec. 1973aa-1(f); and (b) our
change of residence requirements do not conform
with 42 USC Sec. 1973aa-1(e). Copies of the rel-
evant provisions of the United States Code are
attached for your information.

Honorable Richard B. Ogilvie - 2.

As you are aware, on July 1, 1972 I approved House Bill 3681 which amends our Election Code to provide a procedure of absentee registration for residents of the State of Illinois who are outside the territorial limits of the United States of America for purposes of voting for president and vice president in a national election. A copy of that enactment is also enclosed.

I would appreciate the benefit of your opinion on the question as to whether Illinois law conforms with requirements of the amendments of 1970 to the Federal Voting Rights Act. If Illinois law does not so conform, would you advise me further as to what action must be taken to insure that our election procedures are in conformity with federal law."

The Federal Voting Rights Act of 1970 provides in pertinent part:

"(f) No citizen of the United States who is otherwise qualified to vote by absentee ballot in any State or political subdivision in any election for President and Vice President shall be denied the right to vote for the choice of electors for President and Vice President, or for President and Vice President, in such election because of any requirement of registration that does not include a provision for absentee registration." 42 U.S.C.A. § 1973aa-1(f).

Provisions covering absentee voting in this State are contained in Article 19 of the Election Code (Ill. Rev. Stat., 1971, ch. 46, par. 19-1 et seq.). Section 19-1 of the Election Code reads as follows:

Honorable Richard B. Ogilvie - 3.

"Any qualified elector of the State of Illinois (other than one to whom an absentee ballot has been delivered or mailed pursuant to Article 20 of this Act) having duly registered where such registration is required who expects to be absent from the county in which he is a qualified elector or who because of being appointed a judge of election in a precinct other than the precinct in which he resides or who because of physical incapacity or the tenets of his religion in the observance of a religious holiday will be unable to be present at the polls on the day of holding any special, general or primary election at which any presidential preference is indicated or any candidates are chosen or elected, for any congressional, State, District, county, town, city, village, precinct or judicial offices or at which questions of public policy are submitted, may vote at such election as hereinafter in this Article provided. (Amended by Act approved June 27, 1967.)" Ill. Rev. Stat., 1971, ch. 46, par. 19-1).

Thus, prior to a qualified elector of this State to being able to vote by absentee ballot, he must be duly registered to vote.

Article 4 of the Election Code (Ill. Rev. Stat., 1971, ch. 46, par. 4-1 et seq.) governs the registration of electors in counties having a population of less than 500,000. Section 4-10 provides:

"No person shall be registered, unless he applies in person to a registration officer, answers such relevant questions that may be asked of him by the registration officer, and executes the affidavit of registration. * * *" (Ill. Rev. Stat., 1971, ch. 46, par. 4-10).

Honorable Richard B. Ogilvie - 4.

In regard to physically disabled persons, a registration team visits such person to accept his registration as if he had applied for registration at the office of the county clerk.

Ill. Rev. Stat., 1971, ch. 46, par. 4-6.

Article 5 of the Election Code (Ill. Rev. Stat., 1971, ch. 46, par. 5-1, et seq.) covers registration of electors in counties having a population of 500,000 or more. The same requirement for personal registration as contained in Article 4, (supra) appears in substantially the same language in section 5-9 of the Election Code (Ill. Rev. Stat., 1971, ch. 46, par. 5-9). Also an equivalent provision is contained in Article 5 as to the registration of physically disabled persons. Ill. Rev. Stat., 1971, ch. 46, par. 5-5.

Article 6 of the Election Code (Ill. Rev. Stat., 1971, ch. 46, par. 6-1, et seq.) covers the registration of electors of certain cities, villages and incorporated towns. Section 6-37 of the Election Code reads as follows:

"Except as otherwise provided for in Section 6-29 of this Article, no person shall be registered unless he applies in person to a registration officer, answers such relevant questions as may be asked of him by the registration officer, and executes the affidavit of registration. * * *"

Honorable Richard B. Ogilvie - 5.

Section 6-29 of the Election Code (Ill. Rev. Stat., 1971, ch. 46, par. 6-29) contains a similar provision as contained in the aforementioned articles as to the registration of disabled persons. It is further provided in section 6-29, (supra):

* * * * *

"In the case of a person who is otherwise qualified and who is absent from his place of residence due to business of the United States, or other persons who are otherwise qualified but are unable to appear because of absence from their residence and are outside the territorial limits of the United States, application to become registered may be made by mail to the Board of Election Commissioners within the periods of registration provided for in this Act."

* * * * *

As you are aware, House Bill 3681 provides for absentee registration for nonresident citizens. A nonresident citizen is defined as:

" * * * a civilian citizen of the United States of America who is residing outside of the territorial limits of the United States of America at the time of a Presidential election and (1) who was qualified to be registered to vote in this State in a Presidential election immediately prior to his departure from the territorial limits of the United States, or (2) who is

Honorable Richard B. Ogilvie - 6.

18 years of age or older and, except for the age requirements, was qualified to be registered to vote in a Presidential election in this State immediately prior to his departure from the territorial limits of the United States. * * *

The provisions of House Bill 3681 are equally applicable to the authorities accepting the registration of voters as is provided for in Articles 4, 5 and 6, of the Election Code (supra) as heretofore mentioned.

Therefore, it appears that under the applicable provisions of the Election Code, absentee registration is permitted in limited situations. These being, in the case of a physically disabled person, a person who is absent from his place of residence due to business of the United States and other persons absent from their residence and outside the territorial limits of the United States. In regard to voting by absent electors in military or naval services, section 20-1 of the Election Code provides that no registration is required in order to vote pursuant to Article 20. (Ill. Rev. Stat., 1971, ch. 46, par. 20-1). However, any elector voting under the provisions of Article 20 of the Election Code (Ill. Rev. Stat., 1971, ch. 46, par. 20-1, et seq.) must make application for an official

Honorable Richard B. Ogilvie - 7.

ballot. Ill. Rev. Stat., 1971, ch. 46, par. 20-2.

As stated above, Article 19 of the Election Code requires a person to be duly registered prior to making application for an absentee ballot. To the extent that the registration requirements of the Election Code do not provide for absentee registration, it is patently obvious that the provisions covering registration do not conform with the requirements of the Federal Voting Rights Act of 1970; which requires provisions for absentee registration.

As legislation is impossible at this date to conform the Election Code with the federal requirements, I suggest that the following procedure be implemented by election officials throughout the State. As no citizen of the United States who is otherwise qualified to vote by absentee ballot can be denied the right to vote by absentee ballot for president and vice president because of a requirement of registration that does not include provisions for absentee registration, (42 U.S.C.A., sec. 1973aa-1(f)), it appears that the election officers of this State must extend the franchise to vote by absentee ballot to an elector who will be outside the county of his residence

Honorable Richard B. Ogilvie - 8.

on November 7, 1972 and is otherwise qualified to vote, but for the requirement of registration, by permitting such individuals to vote by absentee ballot for their choice of president and vice president. Therefore, electors falling within the above category would not be denied the right to cast an absentee ballot due to the lack of provisions for absentee registration.

However, prior to permitting these individuals to cast an absentee ballot, they should be required to make proof of their eligibility for the ballot.

As earlier stated, provisions covering absentee voting are contained in Article 19 of the Election Code (supra). Section 19-3 of the Election Code (Ill. Rev. Stat., 1971, ch. 46, par. 19-3) contains various forms of applications for obtaining an absentee ballot. It should be noted that the applications provided therein are all in affidavit form.

As the provisions of the Election Code require that an affidavit setting forth the qualifications of the voter be submitted as a prerequisite to obtaining an absentee ballot, I suggest that sufficient proof of the eligibility of voters

Honorable Richard B. Ogilvie - 9.

(within the above classification) desirous of casting an absentee ballot can also be obtained in affidavit form.

If an affidavit is used for this purpose, I further suggest that the affidavit as set forth in the appendix and labeled Exhibit "A" be utilized. The form and contents of this affidavit are adopted from the affidavit and application for a ballot by an elector who expects to be absent from his county as contained in section 19-3 of the Election Code (supra). Minor adaptations for voting solely in presidential and vice presidential elections are contained in the suggested format so that it will be clear to the election officials that the voter is eligible for only a presidential and vice presidential ballot.

The above provisions of the Federal Voting Rights Act of 1970 extend only to the conduct of an election for the choice of president and vice president and the various states still have the power to regulate the elections of their own officials. (Oregon vs. Mitchell, 400 U. S. 112, 91 S. Ct. 260, 27 L. Ed. 2d 272). Therefore, it is my opinion that the absentee voting procedure I have heretofore recommended, not be extended to electors who desire to vote for state and local candidates in the ensuing general election.

Honorable Richard B. Ogilvie - 10.

The Federal Voting Rights Act of 1970 further provides:

"(e) If any citizen of the United States who is otherwise qualified to vote in any State or political subdivision in any election for President and Vice President has begun residence in such State or political subdivision after the thirtieth day next preceding such election and, for that reason, does not satisfy the registration requirements of such State or political subdivision he shall be allowed to vote for the choice of electors for President and Vice President, or for President and Vice President, in such election, (1) in person in the State or political subdivision in which he resided immediately prior to his removal if he had satisfied, as of the date of his change of residence, the requirements to vote in that State or political subdivision, or (2) by absentee ballot in the State or political subdivision in which he resided immediately prior to his removal if he satisfies, but for his nonresident status and the reason for his absence, the requirements for absentee voting in that State or political subdivision." 42 U.S.C.A. § 1973aa-1(e).

There is no similar provision in our Election Code which extends the right to vote for president and vice president to a former resident of this State who has begun residence in another State after the 30th day next preceding the election for president and vice president.

However, House Bill 3681 extends the franchise to nonresident citizens who are residing outside the territorial limits of the United States but who were qualified

Honorable Richard B. Ogilvie - 11.

to be registered to vote immediately prior to their departure. By extending the franchise to these individuals to vote in presidential and vice presidential elections, House Bill 3681 is less restrictive than the Federal Voting Rights Act of 1970. The Federal Voting Rights Act of 1970 permits certain former qualified electors to vote in the presidential and vice presidential election when they move into another state within 30 days immediately prior to the election. In comparison, House Bill 3681 extends the franchise to former residents who have located themselves outside the territorial limits of the United States, without any requirement they had previously qualified as voters.

Therefore, I am of the opinion that our Election Code does not conform to the requirements of the Federal Voting Rights Act of 1970 as set forth above in relation to enfranchising former citizens of this State who have become residents of another State within the 30 day period.

However, the right to vote for president and vice president should only be extended to such former citizens who are "otherwise qualified to vote" in any election for president and vice president. I interpret the phrase "otherwise qualified to vote" as used in subsection (e) to mean in the case of a

Honorable Richard B. Ogilvie - 12.

former resident of this State that he was duly registered to vote in Illinois prior to his departure from the State; as well as meeting the standard eligibility requirements. Therefore, prior to permitting such nonresident to vote in person or by absentee ballot for choice of president and vice president, proof of his prior qualifications to vote should be obtained.

I noted above that Article 19 of the Election Code (supra) provides for various forms of affidavits to be executed by a voter prior to obtaining an absentee ballot. Section 6-29 of the Election Code (Ill. Rev. Stat., 1971, ch. 46, par. 6-29) provides for an affidavit of registration. House Bill 3681 also contains a nonresident citizen registration affidavit.

In view of the fact that the Election Code prescribes the use of an affidavit for the setting forth of an individual's qualifications to vote, I, therefore, suggest that an affidavit setting forth the qualifications of a former resident voter would be satisfactory evidence of his eligibility to vote. Contained in the appendix attached hereto are two suggested affidavit forms for former residents. Exhibit "B" is an

Honorable Richard B. Ogilvie - 13.

affidavit for the use of a former resident desiring to vote in person at the presidential and vice presidential election. Exhibit "C" is an affidavit and application for an absentee ballot for the use of a former resident.

In drafting these affidavits, I relied upon the format of the affidavit and application for registration for nonresident citizens contained in House Bill 3681. This affidavit form together with the adoptions made therein set forth all relevant facts necessary for the determination of the eligibility for the former resident to vote in the presidential and vice presidential election.

Very truly yours,

A T T O R N E Y G E N E R A L

APPENDIX

**AFFIDAVIT AND APPLICATION FOR PRESIDENTIAL AND
VICE PRESIDENTIAL BALLOT BY ELECTOR NOT DULY
REGISTERED WHO EXPECTS TO BE ABSENT FROM COUNTY:**

To be voted at the Presidential and Vice Presidential election
in the County of and State of Illinois, in
the precinct of the (1) *township of
(2) *City of or (3) *.
ward in the City of
State of) ss.
County of)

I,, do solemnly swear that I am
a resident of the precinct of the (1) *township
of (2) *City of or (3) *.
ward in the city of residing at
in such city or town in the county of
and State of Illinois; that I have lived at such address for .
. days last past; that I am lawfully entitled to vote in
such precinct at the Presidential and Vice Presidential election
to be held therein on; that I expect to be ab-
sent from the county of my residence on the date of holding such
election, and that I will have no opportunity to vote in person
on that day.

I hereby make application for an official Presidential and Vice
Presidential ballot to be voted by me at such election if I am
absent from the county of my residence, and I agree that I shall
return such ballot to the official issuing the same in sufficient
time for such official to deliver such ballot to the polls on the
date of the election.

.
*fill in either (1), (2) or (3).
Post office address to which ballot is mailed:
.

Subscribed and sworn to by who is
personally known to me, before me this day of
. A.D.
.
Official Capacity

EXHIBIT "A"

AFFIDAVIT AND APPLICATION FOR
PRESIDENTIAL AND VICE PRESIDENTIAL BALLOT
BY FORMER ILLINOIS RESIDENT

I, the undersigned, (Name).
. hereby request the
right to vote in the Presidential and Vice Presidential
election to be held on as a
former resident voter. In connection with this request,
I hereby swear (or affirm) that:

1. I am a citizen of the United States
presently residing in the State of
.
At (address)
.
2. My residence began in the State of
.
on which is
a date after the thirtieth day next
preceding the Presidential and Vice
Presidential election and by reason
thereof the laws of the State of . .
. preclude me from
registering to vote.
3. My residence address immediately prior
to my residence in the State of . . .
was in the (city or village)
of county of
State of Illinois.
4. I was a registered voter in the State
of Illinois from the above listed
address.
5. I am not entitled to vote for Presiden-
tial or Vice Presidential electors in
any other State or from any other place
in the State of Illinois.
6. I am years of age.

IN WITNESS WHEREOF, I have executed this affidavit

all as of the day of 19 . .

.
(Signature)

Subscribed and sworn to by
who is personally known to me, before me this
day of A. D.

.
(Official Capacity)

EXHIBIT "B"

**AFFIDAVIT AND APPLICATION FOR
ABSENTEE PRESIDENTIAL AND VICE PRESIDENTIAL
BALLOT BY FORMER ILLINOIS RESIDENT**

I, the undersigned, (Name)
hereby request the right to vote by absentee ballot in the
Presidential and Vice Presidential election to be held on
. as a former resident voter.
In connection with this request, I hereby swear (or affirm)
that:

1. I am a citizen of the United States
presently residing in the State of
.
At (address)
.
2. My residence began in the State of
.
on which is
a date after the thirtieth day next
preceding the Presidential and Vice
Presidential election and by reason
thereof the laws of the State of . .
. preclude me from
registering to vote.
3. My residence address immediately prior
to my residence in the State of . . .
was in the (city or village)
of county of
State of Illinois.
4. I was a registered voter in the State
of Illinois from the above listed
address.
5. I am not entitled to vote for Presiden-
tial or Vice Presidential electors in
any other State or from any other place
in the State of Illinois.
6. I am years of age.
7. I expect to be absent from the county
of my former residence on the date of
the holding of the presidential election,
and that I will have no opportunity to
vote in person on that day.

I hereby make application for an official presidential ballot to be voted by me at such election if I am absent from the county of my former residence, and I agree that I shall return such ballot to the official issuing the same not later than the time of closing of the polls in such state on the day of such election.

IN WITNESS WHEREOF, I have executed this affidavit
all as of the day of 19 . .

.
(Signature)

Subscribed and sworn to by
who is personally known to me, before me this
day of A. D.

.
(Official Capacity)