

STATE OF NORTH DAKOTA

ATTORNEY GENERAL'S OPINION NO. 92-19

Date issued: December 3, 1992

Requested by: Doug Mattson, Ward County State's Attorney

- QUESTION PRESENTED -

Whether an absentee ballot application which includes only a person's name, the person's address, a request that an absentee ballot be sent to a given address, the person's signature and the date signed meets the minimum requirements of N.D.C.C. ' 16.1-07-06.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that an absentee ballot application which includes only a person's name, the person's address, a request that an absentee ballot be sent to a given address, the person's signature and the date signed does not meets the minimum requirements of N.D.C.C. ' 16.1-07-06.

- ANALYSIS -

North Dakota law specifically sets forth the requirements for an absentee ballot application.

Application for an absent voter's ballot must be made on a blank furnished by the proper officer of this county, city, or school district, of which the applicant is an elector, or on any blank containing the required information and in substantially the following form:

I, \_\_\_\_\_, a duly qualified elector of the township of \_\_\_\_\_, or of the \_\_\_\_\_ precinct of the \_\_\_\_\_ ward and residing at \_\_\_\_\_ in the city of \_\_\_\_\_, of the county of \_\_\_\_\_ of the state of North Dakota, to my best knowledge and belief entitled to vote in such

precinct at the next election, hereby make application for an official absent voter's ballot to be voted by me at such election. I understand that it is a criminal offence to make a false statement in order to obtain an absentee ballot.

I have resided in my precinct for at least thirty days.

My phone number is \_\_\_\_\_.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
-----  
(signature of applicant)

\_\_\_\_\_  
-----  
(mailing address)

N.D.C.C. ' 16.1-07-06(1) (Emphasis supplied.) This section explicitly sets forth the information which must be contained in an application for an absentee ballot. The language of the statute is mandatory. Morgan v. Hatch, 274 N.W.2d 563 (N.D. 1979). As indicated by the underlined wording, the exact format set forth in the statute need not be followed, however, all required information must be included.

N.D.C.C. ' 16.1-07-06 is clear and unambiguous. It requires an absentee ballot application to contain the following information: the township or precinct and ward of the applicant, the address which the applicant resides including the city and county of residence, a statement that the applicant is a duly qualified elector and to the best of the applicant's knowledge and belief is entitled to vote in the precinct listed, recognition that it is a criminal offense to make a false statement in order to obtain an absentee ballot, a statement that the applicant has lived in the precinct for at least 30 days, the applicant's phone number, signature, date of signature and mailing address.

The North Dakota Supreme Court has held that election laws are mandatory in two circumstances. If enforcement is sought prior to the election or if noncompliance with the statute would defeat the intent and purpose of the statute, the statute is mandatory. Homer Township v. Zimney, 490 N.W.2d 256, 259 n.2; Morgan v. Hatch, 274 N.W.2d 563 (N.D. 1979); Great Northern Ry. Co. v. Esterby, 179 N.W.2d 725 (N.D. 1970).

The purposes behind the statutory requirements for absentee applications is to assure that only qualified electors vote

ATTORNEY GENERAL'S OPINION NO. 92-19  
December 3, 1992  
Page

and to provide a remedy against persons who improperly obtain an absentee ballot. Thus, both circumstances are met. The election has not yet been held and the intent and purposes of N.D.C.C. ' 16.1-07-06 would be thwarted by accepting applications which do not meet the statutory requirements. In my opinion an absentee ballot application which contains only the applicant's name, address, signature, and date of signature does not contain the mandated information nor does it substantially comply with N.D.C.C. ' 16.1-07-06.

- EFFECT -

This opinion is issued pursuant to N.D.C.C. ' 54-12-01. It governs the actions of public officials until such time as the questions presented are decided by the courts.

Nicholas J. Spaeth  
Attorney General

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Assistant Attorney General

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