

# MAINE STATE LEGISLATURE

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Noted - 12/10/19  
2 copies 134  
2.1 M.R.S.A. 1252 et seq.

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June 3, 1976

Mrs. Helen Carey  
City Clerk  
Waterville, Maine 04901

Re: Absentee Ballots - Primary Elections

Dear Mrs. Carey:

This letter responds to your request for advise from this office on a question involving absentee ballots for primary elections. Your specific question involves the following fact situation. Approximately three months prior to the election, a duly registered voter made application to change his enrollment from one political party to another. There is a period of three months following such application during which the applicant is ineligible to vote in a primary election. In the present case, this three month period will expire on June 5, and the primary election will be held on June 8th. Prior to June 5th the voter applies for an absentee ballot for the primary election. Your question is whether, under such circumstances, an absentee "party" ballot should be sent to the voter and whether the returned ballot should be counted on June 8th, assuming that it is otherwise acceptable. We answer both questions in the affirmative.

The statutes concerning change of party enrollment provide the following:

"On receipt of the application [for change of enrollment], the registrar shall remove the party designation beside the name of the applicant on the voting list and shall make a notation on the voting list that the applicant is ineligible to vote at a caucus or primary election, or to file a petition as a candidate for nomination by primary election, for a period of three months. At the expiration of three months from the date of receipt of the application by the registrar, the registrar shall enroll the applicant in the party requested." 21 M.R.S.A. § 134,2

"A voter may not vote at a caucus or primary election or file a petition as a candidate for nomination by primary election within three months after filing an application to change his enrollment . . ." 21 M.R.S.A. §134,3.

The foregoing statutory sections would clearly allow an individual to vote in person at a primary election if his three month waiting period for change of party enrollment ended on June 5 and the election was not until June 8. However, the situation becomes more complicated when the individual wishes to vote by absentee ballot, because the procedures for such ballot, as set forth in 21 M.R.S.A. § 1252 et seq, require that certain acts be performed prior to the date of the election. The voter must apply for an absentee ballot, the registrar must check the application, the clerk must provide the ballot, and the voter must mark the ballot before certain specified officials and return it to the clerk prior to 8:00 p.m. on the election day. It is possible that all these steps could be completed prior to the date which marks the end of the three month period of ineligibility for one who has changed his party enrollment.

The statutes do not provide for this particular circumstance. Nor is there any evidence that the Legislature considered the possible concurrent application of the change of enrollment and absentee voting procedures. However, it is our opinion that the use of the absentee voting procedure should not deprive a voter of his franchise in a primary election if he would have been qualified to cast his vote in person on the day of the election. The action of the registrar in enrolling the applicant in the party requested at the end of the three month period specified by 21 M.R.S.A. §134,2, is a ministerial act and would be performed without any further application by the individual voter. The fact that preparatory voting procedures may necessarily precede the date of this ministerial act should not void the ballot.

The registrar is required by 21 M.R.S.A. § 1253,4 to certify on the application for an absentee ballot that "the applicant . . . is registered, and enrolled where necessary . . .". If the applicant for the absentee ballot will automatically become enrolled in the party he designates in his application prior to the date of the primary election, the registrar should certify this fact after checking the notation on the voting list. So long as such enrollment will take place prior to the date of the election, the clerk should send the absentee ballot as requested. Similarly, the returned ballot should be duly counted on the primary election day since the voter would be properly enrolled at that time without requirement of any further act on his part.

Sincerely,

*S. Kirk Studstrup*  
S. KIRK STUDSTRUP  
Assistant Attorney General

SKS:jg  
cc: Secretary of State