

MAINE STATE LEGISLATURE

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STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

September 22, 1980

Russell McKenna
City Clerk
City Hall
73 Harlow Street
Bangor, Maine 04401

Dear Mr. McKenna:

As you undoubtedly know, my office has been conducting an examination of certain problems related to absentee voting in the City of Bangor. In the course of that examination, it has come to our attention that the City Clerk's Office has received absentee ballot applications which are incomplete in that they contain absolutely no indication of the reason why the person is requesting the ballot. We have been informed that these applications have been accepted, with the understanding that they may be challenged at the time the ballots are counted.

I am writing to inform you that we interpret Maine law to prohibit a clerk from issuing a ballot pursuant to a facially incomplete application. Under the relevant statute, the clerk is authorized to send or deliver a ballot "on receipt of a completed application." 21 M.R.S.A. § 1253(2) (emphasis added). Similarly, in describing the duty of the clerk to deliver the application to the registrar, the law makes reference to "the completed application." 21 M.R.S.A. § 1253(4). Finally, 21 M.R.S.A. § 1252(2) requires that the application "contain a place for the applicant to designate the reason for requesting an absentee ballot." These statutes clearly lead to the conclusion that the Legislature intended that the application be complete before it could be processed by the city clerk.

Were the subject matter merely of a technical nature, it might be possible to argue that the statutory requirement is directory only, and thus, the omissions could be ignored. In these instances, however, the omitted information pertains to

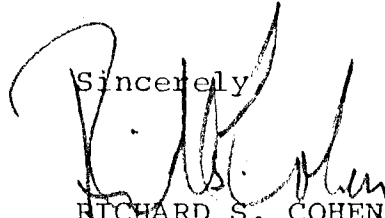
the critical question of whether the person is entitled under Maine law to vote by absentee ballot. See 21 M.R.S.A. § 1(1). Accordingly, we do not believe there is any basis for concluding that the incompleeted applications may be processed on the theory that they are in substantial compliance with the law.

There appear to be two ways to remedy the problem. The first would be to notify the voters and afford them the opportunity either to amend the original applications or to submit new ones. The second would be to treat each incomplete application as "a request for an absentee ballot" under 21 M.R.S.A. § 1253(2), in which case a blank application should be transmitted to the voter along with the absentee ballot. Needless to say, the voter should be informed as to why the additional application is being required. Finally, we should point out that if completed applications are subsequently filed on behalf of any of the voters in question, apart from any action taken by your office, those applications should be treated as the first applications for those voters, in light of the invalidity of the prior applications.

In closing, I would note that the conclusions set out in this letter not only accord with Maine law but also are supported by consideration of public policy. If a facially incomplete application is accepted, a subsequent challenge at the time the ballots are counted would almost certainly be successful. The result would be to disenfranchise the voter. By contrast, the procedures outlined herein allow the voter to remedy the problem in time to insure that his or her vote will not be disqualified.

Since I recognize that this process has been the source of some confusion, please feel free to contact me if my office can be of any assistance.

Sincerely,

A handwritten signature in dark ink, appearing to read 'R. S. Cohen', is written over the word 'Sincerely'.

RICHARD S. COHEN
Attorney General

RSC:mfe