

MAINE STATE LEGISLATURE

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REVISED STATUTES
OF THE
STATE OF MAINE
1954

1957 CUMULATIVE SUPPLEMENT

ANNOTATED

IN FIVE VOLUMES

VOLUME 1

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THE MICHIE COMPANY
CHARLOTTESVILLE, VIRGINIA
1957

Contested Elections.

Sec. 84. Claimant of county or municipal office to proceed as in equity.

Applied in *Miller v. Hutchinson*, 150 Me. 279, 110 A. (2d) 577.

Chapter 6.**Absent Voting. Physical Incapacity Voting.**

The right to vote in absentia by absentee ballot is statutory and one who exercises such statutory rights must comply substantially with the provisions of the statute. *Miller v. Hutchinson*, 150 Me. 279, 110 A. (2d) 577.

What provisions directory.—The provisions of this chapter touching the procedure to be employed at the polls and the disposition of applications and envelopes following an election are directory and not mandatory in nature. Distinction was made between acts of the voter and

acts of the election officials. The voter must comply with the statute insofar as his acts are concerned. Opinion of the Justices, 152 Me. 219, 130 A. (2d) 526.

Validity of ballots where election officials fail to carry out duties.—As to whether absentee voters' ballots are invalidated by the failure of election officials to carry out their duties strictly in accordance with this chapter in stated categories, see Opinion of the Justices, 152 Me. 219, 130 A. (2d) 526.

Sec. 2. Secretary of state to prepare ballots, blank forms, instructions, etc., for city and town clerks.

Requirements mandatory.—This section directs the city clerk to prepare an absentee voting ballot, a blank form of application for such ballot and envelopes of sufficient size to contain the ballot. Among other requirements the aforesaid envelopes are to bear on the reverse side the required affidavit prescribed by subsection IV. These statutory requirements are mandatory. *Miller v. Hutchinson*, 150 Me. 279, 110 A. (2d) 577.

The oath required by this section is mandatory and failure of the voter to make or take such an oath, administered by a qualified official, is fatal and invali-

dates the vote so cast. *Miller v. Hutchinson*, 150 Me. 279, 110 A. (2d) 577; Opinion of the Justices, 152 Me. 219, 130 A. (2d) 526.

Certificate on envelope held insufficient.—A certificate on the envelope of an absentee ballot that "the above statements made by said affiant are true to the best of my knowledge and belief" does not constitute a compliance with this section, which requires a jurat that the voter "personally appeared * * * and made oath to the truth of the statement contained hereon." *Miller v. Hutchinson*, 150 Me. 279, 110 A. (2d) 577.

Sec. 6. Procedure in cities.—When a written request for an absent voting ballot or physical incapacity voting ballot is received by the clerk of a city, he shall forthwith mail or deliver the application and ballot to the applicant; provided, however, that if the request is made on the form prescribed by subsections II and III of section 2, then he shall mail or deliver only the ballot. If the applicant requests in writing that the ballot be delivered to a third person, the city clerk shall comply with said request. Before the closing of the polls on election day, the clerk shall deliver to the officials charged by law with the registration and enrollment of voters in such city all applications for absent voting and physical incapacity voting ballots which have been received by him. Such officials shall examine each application and, if they believe the signature thereon to be genuine and the statements therein made to be true, they shall execute the certificate thereon and return it to the clerk. If the officials do not believe the signature to be genuine or the statements made by the applicant to be true, and so decline to execute the certificate, they shall forthwith mail to the applicant at his address as stated on his application written notice to that effect, giving their reasons for so declining and informing him that his ballot will not be counted. They

shall keep a record in a book provided for that purpose of all voters whose applications for official absent voting ballots or physical incapacity voting ballots are certified to the city clerk together with the date of the execution of the certificate on the application. They shall preserve the application until the time set by law for the destruction of ballots cast in the coming election, at which time the application shall also be destroyed. The clerk shall keep lists of the names and addresses, arranged by voting precincts, of all voters filing applications for absent voting ballots or physical incapacity voting ballots and shall post copies of such lists for public inspection at each voting place. The clerk shall cause to be placed on the voting list, opposite the name of each person to whom an official absent voting ballot or physical incapacity voting ballot is mailed or delivered, the letters in capitals A. V. (R. S. c. 6, § 6. 1949, c. 349, § 3. 1951, c. 303. 1955, c. 47, § 9. 1957, c. 132, § 1.)

Effect of amendments. — The 1955 amendment inserted the reference to subsection II of section 2 in the first sentence. The 1957 amendment inserted the second sentence of this section.

Sec. 7. Procedure in towns and plantations.—When a written request for an absent voting ballot or physical incapacity voting ballot is received by a clerk of a town or plantation, he shall forthwith mail or deliver the application and ballot to the applicant; provided, however, that if the request is made on the form prescribed by subsections II and III of section 2, then he shall mail or deliver only the ballot. If the applicant requests in writing that the ballot be delivered to a third person, the clerk of the town or plantation shall comply with said request. Before the closing of the polls on election day, the clerk shall deliver to the officials charged by law with the registration and enrollment of voters in such town or plantation all applications for absent voting and physical incapacity voting ballots which have been received by him. Said officials shall examine each application and if they believe the signature thereon to be genuine and the statements therein made by the applicant to be true, they shall execute the certificate thereon and return it to the clerk. If the officials do not believe the signature to be genuine or the statements made by the applicant to be true, and so decline to execute the certificate, they shall forthwith mail to the applicant at his address as stated on his application written notice to that effect, giving their reasons for so declining and informing him that his ballot will not be counted. They shall preserve the application until the time set by law for the destruction of ballots cast in the coming election, at which time the application shall also be destroyed. The clerk shall cause to be placed on the voting list, opposite the name of each person to whom an official absent voting ballot or physical incapacity voting ballot is mailed or delivered, the letters in capitals A. V. (1947, c. 146, § 2. 1951, c. 348, § 9. 1953, c. 308, § 5. 1957, c. 132, § 2.)

Effect of amendment. — The 1957 amendment inserted the second sentence of this section. required to be executed upon the application by officials, pursuant to this section, are executed only by one such official, see Opinion of the Justices, 152 Me. 219, 130 A. (2d) 526.

Certificates executed by only one official.—As to counting absentee ballots in voting precincts in which the certificates

required to be executed upon the application by officials, pursuant to this section, are executed only by one such official, see Opinion of the Justices, 152 Me. 219, 130 A. (2d) 526.

Sec. 11. Procedure to be employed by election officials at polls, in respect to absent voting ballots or physical incapacity voting ballots.

Preservation of applications and envelopes.—As to counting absentee ballots in voting precincts in which the absentee applications and envelopes were not in the

box delivered to the secretary of state containing the ballots cast in such precinct, see Opinion of the Justices, 152 Me. 219, 130 A. (2d) 526.

Sec. 12. Challenge of absent voting ballots, procedure; penalty.

Cited in Opinion of the Justices, 152 Me. 219, 130 A. (2d) 526.