



STATE OF MICHIGAN
TERRI LYNN LAND, SECRETARY OF STATE
DEPARTMENT OF STATE
LANSING

MEMORANDUM

DATE: November 21, 2007
TO: County, City and Township Clerks
FROM: Michigan Department of State, Bureau of Elections
SUBJECT: Distribution of Absent Voter Ballot Application Forms to Voters

As you may be aware, the recent Michigan Appeals Court ruling on the mass mailing of absent voter ballot application forms to voters (*Taylor v Currie*) concludes as follows:

“To construe MCL 168.759 to permit Currie to distribute, in her official capacity, what amounts to propaganda at the city’s expense is certainly not within the scope of Michigan election laws or the Michigan Constitution. MCL 168.759(5) does not permit a city clerk to mail absent voter ballot applications without having received a verbal or written request. Accordingly, we conclude that the trial court did not err in granting injunctive relief on this basis.”

Given the above conclusion, a number of questions have been raised by clerks regarding the distribution of absent voter ballot application forms in advance of elections. Answers to the questions are provided below:

Does the ruling impact Michigan’s county clerks?

County clerks have no authority under MCL168.759 to distribute absent voter ballot applications unless the county clerk is acting in the role of school election coordinator. The ruling would apply to the county clerks as they perform their school election coordinator role.

* ***Can a clerk explain the ruling to voters who are on a mass mail listing that the clerk has been maintaining?***

Yes, it would be prudent to advise voters who have come to rely upon the mass mailing of absent voter ballot application forms that the clerk may only mail the forms to voters who have requested them.

* ***If a clerk maintains a mass mail list that only contains the names of voters who have asked to be placed on the list, can he/she continue to use the list to mass mail absent voter ballot application forms?***

Yes, as long as the voters on the list have all asked to receive applications.

If the mass mail listing compiled by the clerk contains the names of voters who did not specifically ask to be placed on the list, does the clerk need to abandon the list if he/she cannot separate out those voters who did not ask to be placed on the list?

Yes, the list must be abandoned if the clerk cannot separate out those voters who did not ask to be placed on the list.

Do clerks have the authority to honor "open ended" absent voter ballot application requests or do voters have to ask for an application for each election as the election approaches?

Requests for absent voter ballot application forms for all upcoming elections are acceptable. Michigan election law provides that clerks must have absent voter ballot applications available for distribution at all times and must provide them to any voter who requests one. While a voter may only file a completed application within 75 days of an election, the law does not limit requests for the application forms to this time period.

Can clerks explain the above option to voters and give them an opportunity to add their names to such a list?

Yes. In the process of informing voters that they will no longer receive applications without a request, clerks may inform voters on how they can continue receiving applications for all upcoming elections. It is appropriate for clerks to inform voters on the process for securing application forms.

Is it permissible for clerks to direct voters to a website to indicate that they would like to receive applications for all upcoming elections?

Yes. Voters may be directed to a website to indicate that they would like to receive applications for all upcoming elections.

Is it permissible for a clerk to post an absent voter ballot application on the jurisdiction's website?

Yes.

Is it permissible for government agencies and entities other than the clerk's office to mass mail absent voter ballot application forms?

This is a matter outside the scope of Michigan election law.

Can absent voter ballot applications be inserted or printed in a city or township newsletter?

This is a matter outside the scope of Michigan election law.

The Court of Appeals ruling makes a statement regarding “propaganda” being mailed at the jurisdiction’s expense in connection with the applications:

“The city clerk, who is an elected official, has the role of neutral arbiter or referee. As a requirement of that office, the city clerk must take and subscribe an oath or affirmation stating,

I do solemnly swear (or affirm) that I will support the Constitution of the United States and the constitution of this state, and I will faithfully discharge the duties of the office of city clerk. (Const. 1963, art 11, sec. 1.)

“To construe MCL 168.759 to permit Currie to distribute in her official capacity, what amounts to propaganda at the city’s expense is certainly not within the scope of Michigan election laws or the Michigan Constitution....”

Given the above, is a clerk authorized to include a signed letter, instructions or information with the application forms?

To avoid even the appearance of not being a neutral arbiter or referee, clerks must not enclose a signed letter or any other informational or instructional material with the applications that could reasonably be construed as “propaganda.”

If you have any additional questions, please feel free to contact the Bureau of Elections at 517/373-2540.