

ALAN BIBLE, *Attorney-General*.
By W.T. MATHEWS, *Deputy Attorney-General*.

133. Elections—Applications for Absent Voter's Ballot for Military Personnel May Be Made by Another Person.

CARSON CITY, April 18, 1944.

HON. MALCOLM McEACHIN, *Secretary of State, Carson City, Nevada*.

DEAR MR. McEACHIN: This will acknowledge receipt of your letter of April 13, 1944, in which you request an opinion concerning the authority of the clerks of the various counties to send an official absent voter's ballot to an elector who is attached to the armed forces of the United States upon the request of a person other than the elector.

We are of the opinion that the County Clerks of the various counties may send an absent voter's official ballot to any qualified elector of the State of Nevada who is attached to the armed forces of the United States, and who expects to be absent on the day of any general, special, or primary election, whether such application is made in person by mail or telegram, or by another person for such elector. If upon receipt of such application, the clerk shall determine that such elector is entitled to vote at such election, he shall send him an absent voter's ballot.

Chapter 90, Statutes of Nevada 1921, was the original act to provide a method of voting by absent voter's ballot.

Section 3 of this Act provided that application shall be made in person or by mail on a blank to be furnished by the County Clerk. The form of the blank set out in this section required the applicant to state his qualifications as an elector, to the reason for his absence, and the same had to be subscribed and sworn to.

Chapter 209, Statutes of Nevada 1929, amended the Act and specifically repealed section 3.

The Legislature in 1943, chapter 119, Statutes of 1943, amended the Act, and in section 2 directly mentioned electors in the service and extended the time in which to make application. The language deemed relevant read as follows:

* * * or attached to the armed forces of the United States, may, not more than ninety (90) days nor less than three days prior to the date of such election, make application in person by mail or telegram to the county clerk of the county in which his precinct is situated, for an absent voter's ballot to be voted by him at such election.

Section 4 of the Act was amended to permit such elector to make the certificate required on the envelope containing the ballot before a military officer. Such an acknowledgment was made possible by the same Legislature under chapter 145, Statutes of Nevada 1943.

The intention of the legislature to provide a means by which those in the military service could exercise their right to vote is unmistakable.

The mandatory provisions contained in section 3 of the Act were definitely repealed by the 1929 Legislature.

Section 2, as it now stands on our statutes, contains the directory words "may make application." This is a permissive section and cannot be construed as being the only method available by which the elector may secure a ballot.

Corpus Juris 20, Elections, paragraph 201, states the rule in construing statutes regulating the

conduct of elections as follows:

Statutes regulating the conduct of elections should be liberally construed so as to effectuate their object of securing to all citizens possessing the necessary qualifications the right to cast their ballot freely for offices to be filled by election and to have those ballots, when cast in compliance with the law, received and fairly counted. Also no statute regulating the conduct of elections should be so construed as to place arbitrary or unreasonable obstructions in the way of a citizen in the exercise of his right to vote.

The words "appearing before" as used in the election registration law were construed in the Attorney-General's Opinion No. 323, 1940-1942 Biennial Report, wherein it was stated that it would be a manifest distortion of the law to assume from the language of the section that the legislature intended that every such elector living outside the State of Nevada and those in the armed forces of the United States be required to present themselves in person before the registrar for the purpose of registering to vote.

This same section of the registration law was construed in the Attorney-General's Opinion No. 208, 1917-1918 Biennial Report, which held that citizens of Nevada compelled to live outside of the State by reason of their connections with the United States Government were entitled to receive registration cards from the registrar, and when properly filled out and returned must be accepted by the registrar and the applicant registered.

To refuse to extend to a qualified elector in the military service of the United States the privilege of voting an absent voter's ballot because application was made by a friend or a relative, and not upon personal request of the elector, would sacrifice the substance of the legislative Act to a mere matter of form.

Very truly yours,

ALAN BIBLE, *Attorney-General*.

135. Attorneys—Attorney Appointed by Court to Defend Person Charged With Murder Entitled to Receive Additional Compensation in Case on Appeal.

CARSON CITY, April 25, 1944.

HON. JOHN W. BONNER, *District Attorney White Pine County, Ely, Nevada*.

DEAR MR. BONNER: This will acknowledge receipt of your letter dated April 22, 1944, and received in this office April 24, 1944, in which you request an opinion as to the right of an attorney at law, appointed by the court to defend a person charged with murder, to receive the compensation provided by sections 11357 and 11358 N.C.L. 1929, when such attorney follows the case into the Supreme Court.

We are of the opinion that the attorney in such a case is entitled to receive an additional compensation in the sum of one hundred dollars for his services in the case on appeal, such sum to be paid by the Treasurer of the county upon the certificate of the Judge of the District Court that the attorney has performed such services.

The spirit of our law is not only to secure to the accused a full and fair trial in the lower court, but also a full review of his case on appeal.

Section 10338 N.C.L. 1929 provides as follows: "If the defendant appears for arraignment without counsel, he must be informed by the court that it is his right to have counsel before being