



2004 - 209

STATE OF ALABAMA  
OFFICE OF THE ATTORNEY GENERAL

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August 24, 2004

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Honorable Nancy Worley  
Secretary of State  
State Capitol Suite S-105  
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Absentee Ballots – Military and  
Overseas Voters – Absentee Voting

State and local election officials in Alabama may not legally participate in the Interim Voting Assistance System that is being advocated by the United States Department of Defense and the Federal Voting Assistance Program. Military voters may apply for and receive absentee ballots by United States mail or hand delivery.

Dear Ms. Worley:

This opinion of the Attorney General is issued in response to your request.

QUESTION

May state and local election officials in Alabama legally participate in the Interim Voting Assistance System that is being advocated by the United States Department of Defense and the Federal Voting Assistance Program?

FACTS AND ANALYSIS

Your request provides the following information:

The Interim Voting Assistance System (“IVAS”) is being proposed to “provide Department of Defense deployed personnel the ability to obtain absentee ballots more quickly, easily and more efficiently. IVAS focuses on expediting the absentee voting process using existing email technology without breaking existing voting processes.”

IVAS will allow a deployed serviceperson to apply for an absentee ballot electronically. Upon confirmation of that person’s registration and eligibility, a designated local election official will electronically provide the designated ballot for that voter to a computer system maintained and protected by the United States Department of Defense. The process will be completed by the deployed voter printing the electronic ballot, voting the ballot, and returning the same to the local election official by statutorily provided means. . . .

You question whether Alabama’s participation in IVAS is authorized by sections 17-10-4 and 17-10-5(d) of the Code of Alabama. Section 17-10-3 provides for absentee balloting generally. Section 17-10-3(a) provides as follows:

(a) Any qualified elector of this state . . . who is a member of, or spouse or dependent of a member of, the armed forces of the United States or is similarly qualified to vote absentee pursuant to the federal Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. 1973ff . . . may apply for and vote an absentee ballot *by mail or by hand delivery* . . . .

ALA. CODE § 17-10-3(a) (Supp. 2003) (emphasis added).

Section 17-10-4 provides for the application for an absentee ballot. Although it does state that “[t]he application shall be in a form prescribed and designed by the Secretary of State,” consistent with section 17-10-3 of the Code of Alabama, it also limits that form to one that “may be handed by the applicant to the absentee election manager or forwarded to

him or her by United States mail.” ALA. CODE § 17-10-4 (Supp. 2003). Section 17-10-5 provides for the delivery of the ballots. Section 17-10-5(a) is more emphatic, directing that “the absentee election manager *shall* furnish the absentee ballot to the applicant by: (1) Forwarding it by United States mail . . . or (2) by handing the absentee ballot to the voter in person.” ALA. CODE § 17-10-5(a) (Supp. 2003) (emphasis added). “The word ‘shall,’ when used in a statute, is mandatory.” *Ex parte Nixon*, 729 So. 2d 277, 278 (Ala. 1998).

In addressing a related question, this Office had occasion to observe that “[t]his provision only allows the absentee election manager to mail the absentee ballot to the voter’s residence address or hand the ballot to the voter in person.” Opinion to the Honorable F. Lenton White, Attorney, City of Dothan, dated June 19, 1997, A.G. No. 97-00209. Section 17-10-5(a) has since been amended by Act 99-388 to also provide for the mailing of the ballot to the address where the voter regularly receives mail. Although section 17-10-5(d) gives the Secretary of State the authority “by rule to prescribe use of standardized military and overseas . . . applications for absentee ballots adopted by the United States government for such use”, this provision merely applies to applications delivered by hand or United States mail. ALA. CODE § 17-10-5(d) (Supp. 2003).

Furthermore, any changes in voting procedures or practices must be submitted to the United States Justice Department for preclearance before implementation of those changes. Changes subject to the preclearance requirements of Section 5 of the Voting Rights Act are ineffective until they are precleared by the federal authorities. *N.A.A.C.P. v. Hampton County Election Comm’n*, 470 U.S. 166, 175 n.19 (1985). Accordingly, even if state law allowed for the implementation of IVAS in Alabama, any changes to allow applying for and receiving absentee ballots by electronic transmission still could not be implemented until they had been precleared.

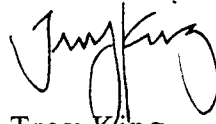
### CONCLUSION

State and local election officials in Alabama may not legally participate in the Interim Voting Assistance System that is being advocated by the United States Department of Defense and the Federal Voting Assistance Program. Military voters may apply for and receive absentee ballots by United States mail or hand delivery.

Honorable Nancy Worley  
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I hope this opinion answers your question. If this Office can be of further assistance, please contact Ward Beeson of my staff.

Sincerely,

A handwritten signature in black ink, appearing to read "Troy King". The signature is fluid and cursive, with the first name "Troy" and last name "King" clearly distinguishable.

Troy King  
Attorney General

BFS/GWB

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