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OPINION	:	No. 79-515
	:	
of	:	<u>August 22, 1979</u>
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SUBJECT: ABSENTEE BALLOTS—Applications for absentee ballots may be distributed by any person including a candidate, but absentee ballots must be delivered to the voter in person or by mail and completed absentee ballots must be returned in person or by mail.

The Honorable Paul T. Bannai, Assemblyman, Fifty-Third District, has requested an opinion on the following questions:

1. May a candidate or a member of a candidate’s campaign organization distribute applications for absentee ballots?
2. May a candidate or a member of a candidate’s campaign organization be authorized by a voter to receive an absentee ballot from the elections official on behalf of a voter?
3. May a candidate or a member of a candidate’s campaign organization be authorized by a voter to return the voter’s completed absentee ballot to the elections official?

CONCLUSIONS

1. Any person, including candidates and members of a candidate's campaign organization, may distribute applications for absentee ballots.

2. Absentee ballots delivered by the elections official pursuant to Elections Code section 1007 must be delivered to the voter in person or by mail and may not be given to third parties for delivery to the voter. In certain hardship cases, as authorized by Elections Code section 1017, absentee ballots may be delivered to an authorized representative of the voter, who may be a candidate or member of a candidate's campaign staff.

3. Absentee ballots obtained pursuant to Elections Code section 1007 must be returned by mail or by the voter in person and may not be returned by a third person though authorized by the voter to make the return. In hardship cases, as authorized in Elections Code section 1017, voted absentee ballots may be returned by the authorized representative of the voter, who may be a candidate or a member of a candidate's campaign staff.

ANALYSIS

1. Distribution Of Applications For Absentee Ballots By a Candidate Or Candidate's Campaign Organization

Elections Code section 1002¹ states:

“Application for an absent voter's ballot shall be made in writing to the elections official having jurisdiction over the election between the 29th and 7th day prior to the election. The application shall be signed by the applicant and shall show his place of residence. Any applications received by the elections official prior to the 29th day shall be kept and processed during the application period.”²

Absentee ballots are to be available to any registered voter (§ 1003). Section 1006 provides the contents for printed applications. Section 1006

¹ Unless otherwise indicated, all section references are to the Elections Code.

² Section 7201 provides the time period for requesting an absent voter ballot for a special primary election. Section 7201, states in part:

“Notwithstanding the provisions of Section 1002, applications for absent voter ballots may be submitted not more than 23 days before the primary election, except that the provisions of Section 1002 shall apply if the special election or special primary election is consolidated with a statewide election.”

states:

“Any printed application, which is to be distributed to voters for requesting absent voter ballots, shall contain spaces for the following:

“(a) The printed name and residence address of the voter as it appears on the affidavit of registration.

“(b) The address to which the ballot is to be mailed.

“(c) The voter’s signature.

“(d) The name and date of the election for which the request is to be made.

“(e) The date the application must be received by the clerk.”

The law does not limit the manner in which applications for absentee ballots are distributed.³ Thus, they may be distributed by anyone, including a candidate or a member of his campaign staff, as long as the application meets the requirements of section 1006 as to its contents.

2. Delivery Of An Absentee Ballot To a Voter By a Candidate Or a Member of a Candidate’s Campaign Organization

Section 1007 states:

“Upon receipt of any absentee ballot application which arrives within the proper time the elections official should determine if the signature and residence address on the ballot application appear to be the same as that on the original affidavit of registration. . . .

“If the official deems the applicant entitled to an absent voter’s ballot he shall deliver *by mail or in person* the appropriate ballot.” (Emphasis added.)⁴

³ Pursuant to section 1018, an application for an absent voter ballot is to be included with the sample ballot

⁴ “Elections official” is defined as “a clerk or any person who is charged with the duty of conducting an election.” (§ 15.)

Section 1017 provides for application and voting by absentee ballot in limited circumstances arising after the close of the general periods specified in section 1002 and 7201. Section 1017 states:

“After the close of the period for requesting absent voter ballots by mail any voter unable to go to the polls because of illness or disability resulting in his confinement in a hospital, sanatorium, nursing home, or place of residence, or any voter unable because of a physical handicap to go to his polling place or because of such handicap is unable to vote at his polling place due to existing architectural barriers at his polling place denying him physical access to the polling place, voting booth, or voting apparatus or machinery, or any voter unable to go to his polling place because of conditions resulting in his absence from the precinct on election day may request in a written statement, signed under penalty of perjury that a ballot be delivered to him; provided, however, that the above described conditions shall have occurred after the close of the application for absent voter ballots. *This ballot shall be delivered by the elections official to any authorized representative of the voter who presents this written statement to the official.*

“Before delivering the ballot the official shall compare the signature on the request with the signature on the voter’s affidavit of registration.

“The voter shall mark the ballot, place it in the identification envelope, fill out and sign the envelope and return the ballot, through the authorized representative, to either the elections official or any polling place within the jurisdiction.”

It is a fundamental rule of statutory interpretation that the intent of the Legislature must be ascertained so as to effectuate the purpose of the law. (*Hogya v. Superior Court* (1977) 75 Cal. App. 3d 122, 132–133.) In ascertaining the will of the Legislature, the words of the statute must be reviewed. If the words of a statute are clear, they must be followed. (*Id.* at pp. 132–133; see also *Great Lakes Properties, Inc. v. City of El Segundo* (1977) 19 Cal. 3d 152; 155.) Where the words are clear, they cannot be added to or altered to accomplish a purpose nor apparent on the face of the statute or from its legislative history. (*People v. Knowles* (1950) 35 Cal. 2d 175, 183.)

The words of section 1007 are clear. The Legislature has specified the elections official *shall* deliver the ballot to the voter personally or shall deliver it by mail to the voter. The language of section 1007 does not evidence any intent to include delivery of the ballot to the voter by any other method than those specified. It is significant to compare the language of section 1007 with that of section 1017. Had the Legislature intended to include

delivery by a voter's authorized representative in section 1007, it is reasonable to conclude it would have expressly included such a provision. (*Cf. Safer v. Superior Court* (1975) 15 Cal. 3d 230, 237–238; *Estate of Tkachuk* (1977) 73 Cal. App. 3d 14, 18.)

Nothing in the history of section 1007 evidences a legislative intent to permit delivery of an absentee ballot to an authorized representative of the voter. To the contrary, the Elections Code of 1939 and the Political Code before it also required delivery of an absentee ballot to the voter personally or by mail. (See Elec. Code 1939, § 5902 (Stats. 1939, ch. 29, p. 221; Stats. 1955, ch. 385, p. 813, § 1); Pol. Code, § 1357 (Stats. 1923, ch. 283, p. 587, § 1).)

Construction of section 1007 to permit delivery of an absentee ballot to the voter only by mail or in person comports with the policy behind the absentee voter statutes to protect the absentee voter's right to a secret ballot. (*Scott v. Kenyon* (1940) 16 Cal. 2d 197, 201; see also Cal. Const. art II, § 7; §§ 1013, 1014.)

Section 1017 expressly provides for delivery of the ballot to the voter by an authorized representative. Section 1017 places no restriction on who an authorized representative may be. Thus, a candidate or a member of a candidate's campaign staff could be authorized by a voter applying under section 1017 to receive an absentee ballot on the voter's behalf.

3. Return Of An Absentee Voter's Completed Ballot To The Elections Official By a Candidate Or a Member of a Candidate's Campaign Organization.

Section 1013 states:

“After marking the ballot, the absent voter may return it to the official from whom it came *by mail or in person, or may return it to any member of a precinct board at any polling place within the jurisdiction.* The ballot must, however, be received by either the official or the precinct board before the close of the polls on election day.

“The official shall establish procedures to insure the secrecy of any ballot returned to a precinct polling place.”

Section 1017 states in relevant part:

“The voter [applying after the close of the period for requesting absent voter ballots by mail] shall mark the ballot, place it in the identification envelope, fill out and sign the envelope and return the ballot, *through the*

authorized representative, to either the elections official or any polling place within the jurisdiction.”⁵

As previously discussed, where the words of a statute are clear, they must be followed to accomplish the Legislature’s intent.

Section 1013 clearly specifies that an absentee ballot may only be returned to the elections official from whom it came either personally or by mail. From a comparison of the language of section 1013 with section 1017, if the Legislature intended to include delivery by an authorized representative in section 1013 it is reasonable to conclude it would have done so.

Section 1017 expressly provides for delivery by an authorized representative. Since it does not limit who such a representative might be, a candidate or member of his campaign staff could act as a voter’s authorized representative.

We have found nothing in the Political Reform Act (Gov. Code, § 81000 *et seq.*) or the Elections Code which would prevent a candidate or a member of his campaign organization from acting as a voter’s authorized representative where use of an authorized representative is statutorily permitted.⁶

⁵ Section 1014 permits a voter using an absentee ballot to personally vote it at the office of the elections official prior to the close of the polls on elections day.

⁶ All persons are, of course, subject to the penal provisions of the Elections Code if they engage in prohibited conduct. For example, it is a crime to aid and abet fraud in connection with a vote cast or to be cast (§ 29610), to interfere with voters lawfully exercising their right to vote (§ 29612), to make offers or promises to give consideration to induce a person to vote for a particular person or refrain from voting (§§ 29620–29624), or to use force, violence, intimidation or coercion to influence a voter (§ 29630).