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JOHN K. VAN DE KAMP
Attorney General

OPINION	:	No. 82-1103
	:	
of	:	<u>JANUARY 26, 1983</u>
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JOHN K. VAN DE KAMP	:	
Attorney General	:	
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CLAYTON P. ROCHE	:	
Deputy Attorney General	:	
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THE HONORABLE DENNIS A. BARLOW, COUNTY COUNSEL,
YUBA COUNTY, has requested an opinion on the following question:

Does section 1017 of the Elections Code, which permits issuance of absentee ballots to certain voters after the normal deadline for application therefor, relate only to conditions and circumstances which have arisen after such deadline, or does the section also relate to preexisting, ongoing conditions?

CONCLUSION

Section 1017 of the Elections Code relates not only to conditions and circumstances which have arisen after the normal deadline for applying for an absentee ballot, but also relates to preexisting, ongoing conditions.

ANALYSIS

Absentee voting is governed by the provisions of section 1000 et seq. of the Elections Code.¹ Section 1002 provides and provided in 1978 that "[a]pplication for an absent voter's ballot, shall be made in writing to the elections official having jurisdiction over the election between the 29th and the 7th day prior to the election" and that applications received *earlier* be kept and processed during that period. Thus, a general deadline of 7 days before an election has been and is currently prescribed for such application.

Prior to its amendment in 1978, section 1003 provided the general eligibility requirements for applying for an absentee ballot. That section provided:

"The absentee ballot shall be available to any registered voter who is unable to appear at his polling place for any one of the following reasons:

"(a) Illness.

"(b) Absence from the precinct on the day of the election.

"(c) Physical handicap.

"(d) Conflicting religious commitments.

"(e) The voter resides more than 10 miles from his polling place.

"The absentee ballot shall also be available to any registered voter who resides within a precinct which is wholly on federally owned or controlled land."

At such time, section 1017 provided as follows with respect to providing certain voters with absentee ballots *after* the prescribed deadline. It provided in 1978:

"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

¹ All section references are to the Elections Code unless otherwise indicated.

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.

"These ballots shall be processed and counted in the same manner as other absentee ballots." (Emphasis added.)

It is thus seen that section 1017 provided an exception to the deadline prescribed by section 1002 for many of the same problems for which a timely absentee ballot might have been requested, but where the problem arose *after* the deadline.

In 1978 section 1003 was amended to read:

"The absentee ballot shall be available to any registered voter."
(Stats. 1978, ch. 77, § 2, p. 213.)

The general deadline prescribed by section 1002, however, was not changed. Nor was section 1017 amended at that time. Accordingly, after the 1978 amendment to section 1003, there were no restrictions as to who could request an absent voter's ballot before the prescribed 7-day deadline. Thereafter, however, only those voters described in section 1017 could obtain such a ballot, and only for conditions which arose *after* the 7-day deadline.

In 1980 section 1017 was amended to read:

"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 or her confinement in a hospital, sanatorium, nursing home, or place of residence, or any voter unable because of a physical handicap to go to his or her polling place or because of such handicap is unable to vote at his or her polling place due to existing architectural barriers at his or her polling place denying him or her physical access to the polling place, voting booth, or voting apparatus or machinery, or any voter unable to go to his or her polling place because of conditions resulting in his or her 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 or her. 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, personally or through the authorized representative, to either the elections official or any polling place within the jurisdiction.

"These ballots shall be processed and counted in the same manner as other absentee ballots."

The effect of such amendment was (1) to make the gender corrections; (2) to add the words "personally or" to paragraph three; and (3) to *delete* the proviso in paragraph one that the described conditions shall have arisen after the normal closing date for applying for an absentee ballot.

We are asked herein whether section 1017, as amended, relates only to conditions and circumstances arising after the closing date for applying for an absentee ballot, or whether it also relates to preexisting, ongoing conditions.²

We believe the answer is clear. ". . . Where an amendment to a statute consists of a deletion of an express provision, the presumption is that a substantial change

² We note that section 1017 has also been amended by chapter 1166, Statutes of 1982, regarding the time when the signatures on applications must be compared with the signatures on the affidavits of registration. Such amendment is immaterial to our consideration herein. We also note that by chapter 1422, Statutes of 1982, the Legislature has added sections 1450 through 1456 of the Elections Code, thereby creating a category of "permanent absent voter" for certain disabled voters.

in the law was intended. . . ." (*Clements v. T. R. Bechtel Co.* (1954) 43 Cal.2d 227, 231.) The only logical conclusion to be drawn from the deletion of the time proviso or restriction in section 1017 is that the Legislature intended that the law should no longer limit the time when the stated conditions must have arisen. This conclusion is also supported by the Legislative Counsel's Digest with respect to Senate Bill 1449, which, when enacted, became chapter 1287, Statutes of 1980. That digest provided in part:

"(5) Under existing law, after the close of the period for requesting an absent voter's ballot by mail, a voter may request a ballot be delivered to him if certain conditions exist and the conditions occurred after the close of the application for absent voter ballots.

"This bill would delete the requirement that the conditions occur after the close of the application for absent voter ballots." (Emphasis added.)

"It is reasonable to presume that the Legislature amended . . . [the] section[] with the intent and meaning expressed in the Legislative Counsel's Digest." (*People v. Superior Court (Douglas)* (1979) 24 Cal.3d 428, 434.)

Accordingly, we conclude that section 1017 of the Elections Code relates not only to conditions and circumstances which arise after the normal deadline for applying for an absentee ballot, but also relates to preexisting, ongoing conditions as prescribed therein.
