



**Office of the Attorney General
State of Texas**

DAN MORALES
ATTORNEY GENERAL

December 14, 1994

Honorable Tim Cone
Criminal District Attorney
Upshur County Justice Center
405 North Titus Street
Gilmer, Texas 75644

Letter Opinion No. 94-092

Re: Whether an early voting mail ballot may be sent to an address *inside* the county in response to a voter's application for such ballot on grounds of absence from the county (ID# 27736)

Dear Mr. Cone:

We understand you to ask whether an early voting mail ballot may be sent to an address *inside* the county in response to a voter's application for such ballot on grounds of absence from the county if the ballot is mailed to the applicant before the beginning of the period for early voting by personal appearance. In this regard, you allude to an "apparent confusion between interpretations of Sections 82.001 and 86.003 of the Texas Election Code." In our opinion, section 86.003(c) supplies the answer to your question. That provision requires, without qualification, that the address to which an early voting ballot is mailed "must be an address outside the voter's county of residence" if the ground for voting early by mail is "absence from the county of residence."

Before 1987, voters in public elections could not vote prior to election day (formerly known as "absentee," now as "early," voting), either by mail or by appearing in person, without meeting one of various eligibility requirements, *e.g.*, expected absence from the county on election day, disability, age of 65 or older. In 1987, the Election Code was amended to allow *any* qualified voter, *i.e.*, one properly registered in the territory covered by the election, to vote by personal appearance during the early voting period. Acts 1987, 70th Leg., ch. 472, § 19. See Elec. Code § 82.005. The period for early voting by personal appearance generally begins on the 20th day before election day and continues through the fourth day before the election, but for certain runoff elections, including the primary runoffs, the period begins on the 10th day before the election. The period for early voting by personal appearance may be further shortened where the period begins on a Saturday, Sunday or holiday--in which case it does not begin until the first succeeding regular business day--or if "because of the date for which an election is

ordered it is not possible to begin early voting by personal appearance on the prescribed date." *Id.* § 85.001.

A voter must still, however, meet one of various eligibility requirements in order to vote early by mail. *See id.* ch. 82. With respect to early mail voting on grounds of expected absence from the county, section 82.001 provides:

(a) Subject to Subsection (b), a qualified voter is eligible for early voting by mail if the voter expects to be absent from the county of the voter's residence on election day and during the regular hours for conducting early voting at the main early voting polling place for that part of the period for early voting by personal appearance remaining after the voter's early voting ballot application is submitted to the early voting clerk.

(b) If a voter's early voting ballot application is submitted on or after the first day of the period for voting by personal appearance, the voter is ineligible for early voting by mail unless the voter is absent from the county when the application is submitted and satisfies the requirements prescribed by Subsection (a).

See also id. §§ 85.005, .006 (hours during early voting period at which personal appearance early voting is to be conducted at main early voting polling place). An application for a mail ballot may be submitted by a voter on or after the 60th day prior to election and the ballot may be mailed to him in response as early as the 45th day prior to the election. *Id.* §§ 84.007, 86.004.

Your concern appears to be that a voter may meet the requirements for voting early by mail (*i.e.*, "expect" to be absent from the county on election day and during the period for personal appearance early voting, that is, beginning on the 20th, or in cases of certain runoffs, on the 10th day before the election), but apply for the mail ballot as early as the 60th day prior to the election and be sent a ballot in response as early as the 45th day--and that in these circumstances the voter could, having applied early, have the ballot sent to his in-county residence, vote, and return the ballot prior to absenting himself. This would avoid the possible difficulties involved in the voter's having to receive the mail ballot at an out-of-county address during a short time frame--he might, for example, be "on the road" and stopping at different hotels each night.

We find, however nothing in the above-quoted provisions of section 82.001 or elsewhere that conflicts with or provides exceptions to the unequivocal requirement of section 86.003(3) that a mail ballot be mailed to the voter at an address outside the

county, where the voter has applied for the ballot on the grounds of absence from the county. Whether it is desirable to change the law in this matter is for the legislature to decide.¹

S U M M A R Y

A mail ballot must be mailed to the voter at an address outside the county where the application for the ballot has been made on grounds of absence from the county.

Yours very truly,



William Walker
Assistant Attorney General
Opinion Committee

¹You do not expressly raise, and we do not therefore attempt to address in detail, any issues as to the constitutionality of the Election Code provisions in question. We do note that, as absentee voting is a privilege granted electors and not an absolute right, we think it quite unlikely that a court would hold the requirement of section 86.003(c) unconstitutional on its face. See 26 AM. JUR. 2D *Elections* § 243 (1966) (and authorities cited there).