



STATE OF ARKANSAS
OFFICE OF THE ATTORNEY GENERAL
JUSTICE BUILDING, LITTLE ROCK 72201

STEVE CLARK
ATTORNEY GENERAL

(501) 371-2007

OPINION NO. 86-22
January 28, 1986

Honorable Gloria Cabe
State Representative
415 Colonial Court
Little Rock, AR 72205

RE: Amendment to Ark. Stat. Ann. §§3-904 and 3-910

Dear Representative Cabe:

This opinion is in response to your request concerning the 1985 amendments to Ark. Stat. Ann. §§3-904 and 3-910. Specifically, subsection (c) of the above statutes, amended by three separate acts of the legislature.

Act 567 amended the election code with respect to delivery of absentee applications and absentee ballots as follows:

(c) By delivery of the application form to the office of the County Clerk of the county of residence of the applicant not later than 1:30 p.m. on election day by a person designated in writing by the applicant, upon proper verification of the signature of the applicant by the County Clerk and validation of the identity of the bearer of the application. Any person who delivers an application for an absentee ballot shall sign an affidavit stating that he or she is the authorized agent of the applicant. A copy of the affidavit shall be returned by the County Clerk as an attachment to the application for an absentee ballot. No person may deliver applications to the Clerk's office for more than two (2) persons. (emphasis added).

(c) By delivery of the ballot to the office of the County Clerk of the county of residence of the voter not later than election day at the time the polls close. Delivery may be made only by a person designated in writing by the elector, upon proper verification of the signature of the voter by the County Clerk and validation of the identity of the bearer of the ballot. Any person, other than the elector, upon proper verification of the signature of the voter by the County Clerk and validation of the identity of the bearer of the ballot. Any person, other than the elector, who delivers an absentee ballot shall sign an affidavit stating that he or she is the authorized agent of the elector. No person may deliver absentee

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ballots to the Clerk's office for more than two (2) persons. (emphasis added).

Act 567 was formerly House Bill 28 which passed the House on March 5, 1985, and subsequently, passed the Senate on March 19, 1985.

Act 568 also amended the same section of the election laws as follows:

(c) By delivery of the application form to the office of the County Clerk of the county of residence of the applicant not later than 1:30 p.m. on election day. Delivery may be made only by the husband, wife, son, daughter, sister, brother, father or mother of the applicant, or any person designated in writing by the applicant, upon proper verification of the signatures of the applicant by the county clerk and validation of the identity of the bearer of the application. Any person who delivers an application for an absentee ballot shall sign an affidavit stating that he or she is the authorized agent of the applicant. A copy of the affidavit shall be returned by the clerk as an attachment to the application for an absentee ballot. No person may deliver applications to the Clerk's office for more than two (2) persons. (emphasis added).

(c) By delivery of ballot to the office of the County Clerk of the county of residence of the voter not later than election day at the time the polls close. Delivery may be made only by a person designated in writing by the elector, upon proper verification of the signature of the voter by the County Clerk and validation of the identity of the bearer of the ballot. Any person, other than the elector, who delivers an absentee ballot shall sign an affidavit stating that he or she is the authorized agent of the elector. No person may deliver absentee ballots to the Clerk's office for more than two (2) persons. (emphasis added).

Act 568 was formerly Senate Bill 10 and passed the House on February 20, 1985, and was amended by the Senate on March 5, 1985, and finally passed the House with the amendments on March 7, 1985.

Finally, Act 612 amended the election code in pertinent part as follows:

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SECTION 1. Paragraph (3) of subsection (a) of Section 4 of Article 9 of Act 465 of 1969, as amended, the same being Arkansas Statutes 3-904(a)(3), is hereby amended to read as follows:

(3) By delivery of the application to the office of the County Clerk of the county of residence of the applicant not later than 1:30 p.m. on the day of the election. Delivery may be made only by the husband, wife, son, daughter, sister, brother, father or mother of the applicant, or any person designated in writing by the applicant, upon proper verification of the signature of the applicant by the County Clerk and validation of the identity of the bearer. Provided, no person may deliver applications to the Clerk's office for absentee ballots for more than five (5) persons. (emphasis added). The elector may deliver the application to the office of the County Clerk of the county of his or her residence not later than 4:30 p.m. on the day immediately preceding the date of the election.

SECTION 2. Subsection (c) of Section 10 of Article 9 of Act 465 of 1969 as amended, the same being Arkansas Statutes 3-910(c), is hereby amended to read as follows:

(c) By delivery of the ballot to the office of the County Clerk of the county of residence of the voter not later than 7:30 p.m. on election day by the husband, wife, son, daughter, sister, brother, father, or mother of the absentee voter, or any person designated in writing by the voter, upon proper verification of the signature of the voter by the County Clerk and validation of the identity of the bearer. Provided, no person may deliver absentee ballots to the Clerk's office for more than five (5) persons. (emphasis added). The voter may deliver the ballot to the office of the County Clerk of the county of his or her residence not later than 5:30 p.m. on the day immediately preceding the date of the election.

Act 612 was formerly House Bill 482 and passed the House on February 5, 1985, subsequently it was approved by the Senate on March 13, 1985.

Specifically, your question concerns the number of absentee voters for whom a person may deliver applications and ballots. Acts 567 and 568 state no more than two (2) persons, while Act 612 states no more than five (5) persons.

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In determining how many absentee voters a person can deliver an application and ballot for, it is the opinion of this office that Act 612 is the controlling piece of legislation.

As a matter of statutory construction, statutes must be read in harmony unless there is no way to reconcile conflicting clauses. In this case Acts 567, 568 and 612 cannot be read in harmony with respect to the number of absentee voters a person may deliver applications and ballots.

Acts 567, 567 and 612 were all signed by the Governor on March 26, 1985. Consequently, each Act contains a general repeal clause, however, no Act, contains an emergency clause. As a general rule where the legislature, at the same session, passes two Acts which are irreconcilable, the one passed later and going into effect earlier will prevail over one passed earlier and going into effect later. Williams v. State, 215 Ark. 757, 223 S.W.2d 190 (1949). However, where an Act does not contain an emergency clause it becomes effective 90 days after the legislature adjourns sine die. Amendment 7, Arkansas Constitution. In this case, each Act became effective on the same day.

Therefore, in order to decide which Act is controlling it must be determined which Act was signed last by the Governor. Where two Acts definitely conflict the last approved by the Governor must prevail. Commonwealth v. Sanderson, 195 S.W.516, at 520 (1938).

§33.11. Acts approved on the same day.

When two acts are approved on the same day, they take effect at the same time if there is no evidence to prove chronological precedence of one over the other.

Sutherland on Statutory Construction §33.11

The Governor's Office maintains a listing of Bills signed by the Governor in the order in which they are approved. The list for March 26, 1985, shows that the Governor approved the following Bills in sequential order.

HB 28	Act 567
SB 10	Act 568
SB 112	Act 569
SB 326	Act 570
SB 471	Act 571
SB 500	Act 572

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SB 501	Act 573
SB 531	Act 574
SB 532	Act 575
SB 533	Act 576
SB 534	Act 577
SB 536	Act 578
SB 559	Act 579
SB 565	Act 580
SB 570	Act 581
SB 571	Act 582
SB 574	Act 583
SB 583	Act 584
SB 587	Act 585
SB 590	Act 586
SB 592	Act 587
SB 595	Act 588
SB 602	Act 589
SB 605	Act 590
SB 606	Act 591
SB 607	Act 592
SB 609	Act 593
SB 611	Act 594
SB 615	Act 595
SB 616	Act 596
SB 619	Act 597
SB 622	Act 598
SB 626	Act 599
SB 627	Act 600
SB 629	Act 601
SB 631	Act 602
SB 635	Act 603
SB 654	Act 604
SB 663	Act 605
SB 658	Act 606
SB 668	Act 607
SB 671	Act 608
SB 675	Act 609
SB 690	Act 610
HB 346	Act 611
HB 482	Act 612

Therefore, since HB 482 or Act 612 was the last bill to become an Act it is controlling, and a person can deliver not more than five (5) absentee applications and ballots.

The foregoing opinion, which I hereby approve, was prepared by Assistant Attorney General Rick D. Hogan.

Sincerely,



STEVE CLARK
Attorney General

jsc:RH:dc