

OFFICIAL OPINION NO. 72-52, Powers and duties of the county auditor in the registration of absentee voters.

STATE OF SOUTH DAKOTA  
OFFICE OF  
THE ATTORNEY GENERAL

September 29, 1972

Dennis R. Padrnos  
States Attorney, Davison County  
Mitchell, South Dakota 57301

OFFICIAL OPINION NO. 72-52

**Powers and duties of the county auditor in the registration of absentee voters.**

Dear Mr. Padrnos:

You have asked my opinion on the following situation:

Several applications for absentee registration were submitted to our county auditor (apparently pursuant to SDCL 12-4-7). In each of the applications the applicant stated that they "were physically unable to appear" and all of the applications were carried to the county auditor by a single person.

The auditor asked my opinion if these applications should be honored, and I stated that: my opinion was NO based upon the following reasons:

1. the law requires the registration applications to be mailed;
2. the bald statement "physically unable to appear" is a conclusion and not a valid reason.

I ask your opinion to determine if my assessment of the situation is correct.

QUESTION 1. Does the law require that an absentee registration application, executed pursuant to SDOL 12-4-7, be mailed to the county auditor?

It is my opinion that you are correct in your assessment that the application forms must be mailed to the auditor. This is expressly found in the statute, and it is my opinion that the Legislature did not intend otherwise.

Therefore, it is my opinion that the procedure outlined by SDCL 12-4-7 does not allow any third person to carry the application forms to the auditor. Mailing is the proper procedure. On that ground alone, the auditor should reject the application forms brought in by the third person.

Upon the receipt of this application, the auditor is to "forward" to said applicant original and duplicate registration cards. Although mailing is not specified, it would appear that to be consistent with SDCL 12-4-21, which purpose is to verify residence of an electorate to prevent fraud and to eliminate excessive names, it would be reasonable that the auditor mail, with instructions on the envelope not to forward, to implement the "forwarding" or the cards. This procedure would not only verify the mailing address of the applicant but would also permit him to register without being subject to the influence of any person who may deliver the cards to him. Of course, the method of forwarding would be at the sound discretion of the auditor.

QUESTION 2. Is the statement "physically unable to appear" sufficient to cause the county auditor to forward the registration cards?

my opinion that the Legislature preferred these two methods of registration may make a personal appearance to register. If the person is out of his county of residence, he may appear before any county auditor in the state and be registered in his home precinct. See SDCL 12-4-4.1. It is my opinion that the Legislature preferred these two methods of registration.

SDCL 12-4-7 made special provisions for registration of those persons who could not personally appear. The mere statement that the person is "physically unable to appear" is not in my opinion enough to meet the requirements of SDCL 12-4-7. As I stated in Official Opinion No. 71-53:

The terminology used in SDCL 12-4-7 is "physically unable to appear" and should be interpreted quite broadly. Since the card provided by the statute does not require an oath, any *valid reason* stated would be sufficient to cause the county auditor to forward the materials needed for registration. (emphasis added)

The phrase "physically unable to appear" is not restricted to a physical ailment. It merely means that the person cannot make a physical appearance for some reason. The applicant has to state a reason that is valid, and a more conclusory statement that he is "physically unable to appear" is not enough. The applicant must designate a reason why he will be physically unable to appear and register, such as, bed-ridden, sick, out of the state, or some other such reason. The mere fact that a person does not wish to appear before the county auditor is not a sufficient reason. The county auditor has to pass upon the validity of the reason in order to forward the registration forms; however, as I stated in Opinion No. 71-53, the statement "physically unable to appear" should be interpreted broadly and any valid reason will suffice.

It is my opinion that the county auditor was given this discretion because the registration by personal appearance is preferred. The Legislature did not intend that the county auditor should go through extra administrative work as required by SDCL 12-4-7 in order that people, who did not wish to inconvenience themselves, would have to appear at a registration official's office. The procedure provided by SDCL 12-4-7 is for those persons who cannot appear because of valid reasons.

Respectfully submitted,

Gordon Mydland  
Attorney General