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**ARIZONA ATTORNEY GENERAL**

Honorable Leon Thompson  
Arizona House of Representatives  
State Capitol  
Phoenix, Arizona 85007

Dear Representative Thompson:

This letter is in response to your questions:

1. Is it legal for a person who is, or who later intends to be, a candidate for public office to reproduce application forms for absentee ballots, pass the forms out throughout the community, and later return to each of the addresses (of which a record was kept) and pick up the absentee ballots, then take the ballots to a designated place where a deputy registrar fills out and mails the absentee ballot back to the department for voting registration?
2. Is it legal under the election code for a person who becomes a deputy registrar to use that office to pick up and mark ballots belonging to other persons and benefit from marking the ballot by later becoming a candidate for public office?
3. Is it legal for any candidate who is running for public office to handle or mark absentee ballots, or is it legal for any person to collect absentee ballots and then mark them in favor of a candidate that is running for public office?

The Arizona Legislature in 1959 amended the absentee voting provisions of Title 16 of the Arizona Revised Statutes. A prime objective of the amendment was to reduce the incidence of fraud through indiscriminate use of requests for absentee ballot material.



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Prior to 1959 requests for absentee applications could be placed by telephone as well as by a written statement. Abuses of the telephone procedure were rampant; many individuals were not consulted as to the use of their name to obtain an absentee ballot application and ballot. Thus, A.R.S. § 16-1102(A) was amended to read:

A. Within thirty days next preceding the Saturday before any election called pursuant to the laws of this state, an elector may make a signed request to the county recorder or other officer in charge of elections for the applicable political subdivision of this state in whose jurisdiction the elector is registered to vote, for an official absentee ballot.<sup>1</sup>

In addition, A.R.S. § 16-1102(B) specifies that upon receipt of such written request the county recorder or other officer in charge of elections shall mail to the elector the application and ballot material.

The only other method of delivery is described in A.R.S. § 16-1110(C) and (D):

C. In lieu of the mailed absentee ballot procedure, any qualified elector who is confined as the result of a continuing illness or physical disability and is, therefore, not able to go to the polls on the day of the next election and who does not wish to vote by the mailed absentee ballot procedure, may request in writing to the county recorder or other officer in charge of elections to have a ballot personally delivered to him by the special election board at his place of confinement within the county or other political subdivision. The ballot shall be delivered to him in person by a special election board as provided in this section. Such requests must be made by five p.m. of the second Friday before the election.

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1. It should be noted that while A.R.S. § 16-1102(A) eliminates telephone requests, it places no restriction upon distribution or duplication of request forms for absentee application and ballot material. In contrast to this, the absentee application and ballot material (recently combined and assembled in a single booklet format) are always under the control of the county recorder or other officer in charge of elections.

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D. Qualified electors who become ill or disabled after the second Friday before the election may nevertheless request personal ballot delivery pursuant to this section and the county recorder or other officer in charge of elections shall when possible honor such requests up to and including the last day before the election.

Those persons who deliver the absentee ballot and application may not be ordinary individuals, but must be appointed by the county recorder or other officer in charge of elections in accordance with A.R.S. § 16-1110(A):

A. The county recorder or other officer in charge of elections, for the purpose of making it possible for qualified electors who are ill or disabled to vote, may appoint such number of special election boards as needed. In a partisan election, each such board shall consist of two members, one from each of the two political parties which cast the highest number of votes in the state in the last preceding general election. The county chairman of each such party shall furnish, within sixty days prior to the election day, the county recorder with a list of names of qualified electors within his political party, and such additional lists as may be required, from which the county recorder shall appoint members to such special election boards. The county recorder may refuse for cause to appoint or may for cause remove a member of this board.

Thus, once a request for an application and ballot has been received, it must be mailed directly to the elector or delivered by authorized agents of the county recorder or other officer in charge of elections.

To avoid fraud once the ballot has been received, the county recorder or other officer in charge is required to provide instructions indicating that not only must the applicant appear before a notary, deputy registrar, or other officer authorized by law to administer oaths; he also must individually mark his ballot outside the view of the officer. Then the officer must sign an affidavit certifying that the applicant "... was not solicited or advised by me to vote for or against any candidate or measure." See A.R.S. § 16-1105(A).

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Finally, A.R.S. § 16-1107(A) requires that:

A. Upon receipt of the envelope containing the absentee ballot and the completed application, the county recorder or other officer in charge of elections shall compare the signatures thereon with the signature of the elector on his affidavit of registration. If satisfied that the signatures correspond and that the application and the affidavit are sufficient, the recorder or other officer in charge of elections shall hold them unopened in accordance with the rules and regulations of the secretary of state. (Emphasis added.)

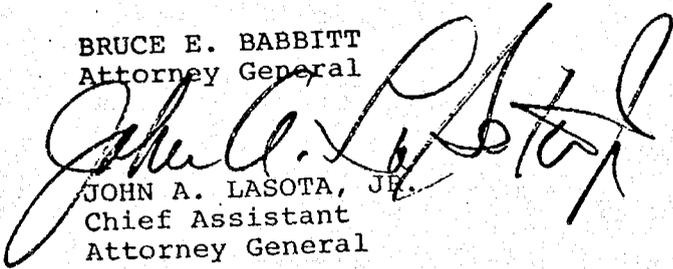
In summary, the provisions of A.R.S. §§ 16-1102, 1105, 1107, and 1110 require that the absentee application and ballot material:

1. Be mailed directly to applicant or be delivered by authorized agents of the election authority;
2. Be filled out and the ballot marked by applicant before an officer authorized to administer oaths;
3. After having been filled out and sealed, must be certified by the officer administering oaths not to have been cast as a result of solicitation or advice from the administering officer;
4. After receipt by the county recorder or other officer in charge be examined and the signature on application and affidavit be compared with the affidavit of registration to ensure the applicant is a qualified elector.

These procedures when properly executed should eliminate fraudulent submissions and provide for an equitable and accessible absentee process.

Sincerely,

BRUCE E. BABBITT  
Attorney General

  
JOHN A. LASOTA, JR.  
Chief Assistant  
Attorney General

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