

August 3, 2007
Opinion Number 07-0173

Ms. Tabitha I. Gray
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28-A ELECTIONS- Qualifications and Disqualification of
Voters

La. Constitution Art. I sec. 10(A); LSA-R.S. 18:105(A); LSA-
R.S. 18:115(F); LSA-R.S. 18:1303

A person who is incarcerated, but not yet convicted of a
crime, has a right to vote. However the manner in which he
votes must be absentee by mail and he is subject to all the
laws which govern that manner of voting.

Dear Ms. Gray:

Your request for an Attorney General's Opinion has been assigned to me for research and reply. On behalf of Senator Charles D. Jones, chairman of the Senate Committee on Senate and Governmental Affairs, you have requested an opinion regarding whether or not a person who is incarcerated, but not yet convicted of a crime, has the right to vote absentee while incarcerated.

Article I section 10(A) of the Louisiana Constitution provides that:

Every citizen of the state, upon reaching eighteen years of age, shall have the right to register and vote, except that this right may be suspended while a person is interdicted and judicially declared mentally incompetent or is under an order of imprisonment for conviction of a felony.

This provision clearly provides that each person, whether incarcerated or not, has the "right" to vote unless that person is currently under order of imprisonment for a felony or interdicted due to judicially declared mental incompetence.

However the manner in which a person, who is incarcerated, can vote has been defined by the Louisiana Legislature. La. R.S. 18:1303(G) states as follows:

A person incarcerated in an institution inside, or outside the parish in which he is qualified to vote, who is not under an order of imprisonment for conviction of a felony, may only vote absentee by mail and only upon meeting the requirements of this Chapter and certification to the appropriate registrar by the sheriff of the parish where the person is incarcerated that he is not a convicted felon. (Emphasis added)

Due to practical and public safety concerns, the method of voting for those incarcerated is thus limited, but not their “right” to vote.

Prior to voting, all persons must be registered to vote with the registrar for the parish in which they wish to vote. This registration may be accomplished either in person or by mail. In person registration is allowed at the Registrar of Voters’ Office, the Department of Motor Vehicles, public assistance agencies (WIC, FITAP, etc.), state disability service offices, Armed Forces recruitment offices, and other state or local governmental offices designated by the Secretary of State. This process clearly provides many opportunities for in person registration.

However, state law provides an alternative to in person registration, that being registration by mail. La. R.S. 18:115 allows for registration by mail for potential voters who are unable to present themselves in person at the Registrar of Voters’ Office. However in order to protect the integrity of our elections and prevent voter fraud, state law does not allow persons who register to vote by mail to initially vote absentee by mail unless they make an appearance at the Registrar of Voters’ Office for identification pursuant to the guidelines set forth in La. R.S. 18:105(A).

For prisoners who have previously registered to vote in person, the process to vote is the same as it is for any other absentee voter.¹ Chapter 7 of Title 18 (The Election Code) provides the manner for absentee by mail voting. This requires the voter to make an application to the registrar for an absentee by mail ballot. Upon completion of this ballot, the elector returns it to the registrar’s office.

However for those persons who are incarcerated and who have previously registered by mail or chose to now do so, there is an important limitation that would affect their ability to vote. As discussed above, a personal appearance is required by either previously voting or appearing at the Registrar of Voters’ Office before a person has who registered to vote by mail is allowed to vote absentee by mail. This personal appearance requirement would preclude those persons, who registered to vote by mail while incarcerated or who prior to incarceration registered by mail but have not yet voted in an election, from voting absentee by mail. This does not mean that such persons do not have a “right” to vote. Rather, it is just a statutory limitation on the manner of voting created by the legislature in order to protect election integrity and personal safety.

In Opinion, No. 02-0335, this office was asked to look at the legality of a person incarcerated, but not imprisoned for a felony conviction, in registering and voting. This

¹ This procedure will cover the majority of persons within the state. Based on the latest population information from the US Census and voter registration data from the Louisiana Secretary of State, currently approximately 88% of Louisiana citizens over the age of 18 are registered to vote.

office concluded that "because of Mr. Rideau's choice of mail application to register to vote, unless he has previously voted in the parish, as an incarcerated person he will not be able to vote absentee by mail."

Louisiana currently provides limited exceptions to the personal appearance requirement of those who registered to vote by mail and seek to vote initially absentee by mail. These exceptions are found in La. R.S. 18:115(F) and cover those individuals who qualify under the Uniformed and Overseas Citizens Absentee Voting Act, the Voting Accessibility for the Elderly and Handicapped Act, the Special Program for Physically Handicapped Voters, and also students at institutions for higher learning located outside the parish. Louisiana also provided such an exception for those displaced by Hurricanes Katrina and Rita, but that exception expired July 16, 2006. Currently there is no exception provided for those who cannot make the required personal appearance due to incarceration.

In conclusion, and as stated in La. R.S. 18:1303(G), the only manner in which a person who is incarcerated, but not yet convicted, may vote is absentee by mail. If that person has previously registered to vote in person, then he would follow the procedures established by law for voting absentee by mail. If that person registered to vote by mail, then the person must have either previously voted in person in the parish in which he is registered or he must have appeared in person at the Registrar of Voters' Office in the parish and identified himself according to La. R.S. 18:115(F)(2) in order to cast an absentee by mail ballot. Accordingly, it is the opinion of this office that if a person who is incarcerated registered to vote by mail but has not yet made a personal appearance (by voting or appearing in person) or does not meet one of the exceptions listed above, then the incarcerated person is statutorily barred from voting absentee by mail.

Hoping this adequately addresses your concern, I remain,

Yours very truly,

CHARLES C. FOTI, JR.
ATTORNEY GENERAL

BY: _____
William P. Bryan, III
Assistant Attorney General

CCF,Jr./WPB, III/sfj

SYLLABUS

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Date Received:

Date Released: August 3, 2007

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