

JULY 28, 1960

MR. SAMUEL A. NAPLES, *Secretary*
Commissioner of Registration
Mercer County Board of Elections
Court House
Trenton, New Jersey

FORMAL OPINION 1960—No. 19

DEAR MR. NAPLES :

We have been asked whether persons in military service may vote in person at the polls. The impression that they may not, but may only vote by military service absentee ballot, has arisen from a reading of certain language in the Absentee Ballot Law, including R.S. 19:57-2, 3, 7, 9, 11, 22 and 29. Without analyzing here the argument to this effect in detail, it will become apparent from a consideration of the general purpose of the Absentee Ballot Law and the constitutional provisions it was adopted to implement, that military voters who are qualified may exercise the right to vote in person at the polls if they have not applied for an absentee ballot for that election.

Both the 1844 N. J. Constitution (as amended in 1875) Art. II, Par. 1, and the New Jersey Constitution of 1947, Art. II, Par. 4, provide that "in time of war no elector in the military service * * * shall be deprived of his vote by reason of absence from his election district." The constitutional provisions were adopted to grant persons in military service in time of war "an imperative right" to absentee voting. *Gangemi v. Berry*, 25 N.J. 1, 11 (1957). The right to vote by absentee ballot was not intended to diminish the right of military personnel to vote, but to assure it. To read the Absentee Ballot Law as providing the exclusive method by which persons in military service must vote would deny the right of franchise to all military personnel who are present in their election districts on election day. This is so because R.S. 19:57-3 makes the absentee ballot available to a person in military service only if he "may be absent on the day on which * * * [an] election is held from the district in which he resides."

That the Absentee Ballot Law intends to facilitate the exercise of the franchise by military personnel is further illustrated by the provision for the case where the military voter returns home within 10 days before the election after requesting an absentee ballot but without receiving it. In that case the statute provides that he may vote by obtaining a new absentee ballot form from the county clerk and may vote by delivering the ballot, properly filled in, to the county board of elections "in person." R.S. 19:57-29. Once a military voter has requested an absentee ballot, he will not, however, be permitted to vote at the polls. His permanent registration form, if any, will have been removed from the permanent registration binders and put in a special "military file." R.S. 19:57-22.

These provisions are in contrast with the case of a civilian absentee voter. When a civilian absentee voter's request for an absentee ballot is approved, a red "A" is placed on his voting record in the space where the number of his ballot would be entered and if he does not receive the absentee ballot for any reason, he cannot vote either in person or by a new absentee ballot. R.S. 19:57-22; R.S. 19:57-32.

It is to be noted that R.S. 19:57-22 provides only that the registration form is to be removed after an application for a military service absentee ballot is made. It does not provide that the registration form is to be removed at any time that the county board is informed that the voter has entered military service. This strongly implies that an option to take advantage of the Absentee Ballot Law or to comply with the general law on registration and voting is afforded the military service voter.

A person in military service voting in person at the polls is not excused from satisfying the conditions for voting to which all persons voting in person at the polls are subject. He must be registered. Cf. R.S. 19:57-25 (excusing registration only in the case of a military service voter voting by absentee ballot). He must meet the residence requirements, R.S. 19:4-1. The rule that a voting residence is not established solely by virtue of residence at or near a military installation by a member of the military service continues unchanged.

For all of the above reasons, a citizen of New Jersey in military service who is qualified to vote, who has registered, and who has not applied for an absentee ballot, may vote at the polls in person.

Very truly yours,

DAVID D. FURMAN
Attorney General

By: WILLIAM L. BOYAN
Deputy Attorney General

JULY 27, 1960

ANTHONY J. PANARO, *Secretary*
Mercer County Board of Taxation
Room 309—Court House Annex
Trenton 10, New Jersey

FORMAL OPINION 1960—No. 20

DEAR SECRETARY PANARO:

You have asked our opinion whether a bank organized under the laws of the State of New Jersey is entitled to compute its tax under the Bank Stock Tax Law (N.J.S.A. 54:9-1 et seq.) by deducting from its capital surplus and undivided profits the assessed value of real estate which it owns but which is located in a county other than the county within which its principal place of business is located.

The bank stock tax is collected by the county for the county and municipal benefit, N.J.S.A. 54:9-13. It is assessed against the common capital stock of "all banks and banking associations organized under the authority of this state or the United States, and trust companies organized under the laws of this state, whose principal place of business is within this state." N.J.S.A. 54:9-1; *City of Passaic v. City of Clifton*, 23 N.J. Super. 333 (App. Div. 1952) aff'd. 12 N.J. 466 (1953). See *Morris & Essex Investment Co., Inc., v. Director of Division of Taxation*, 33 N.J. 24 (1960). The bank stock tax is expressly declared to be "in lieu of all other state, county or local taxation upon such shares or upon any personal property held or owned