



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

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Jim Ryan
ATTORNEY GENERAL

FILE NO. 00-005

ELECTIONS:
Voting for Drainage
District Commissioners

The Honorable Matthew L. Sullivan
State's Attorney, Edgar County
115 West Court Street Room S
Paris, Illinois 61944-1787

Dear Mr. Sullivan:

I have your letter wherein you inquire whether persons who own land in Edgar County, but who reside in another State, may be permitted to vote for drainage district commissioners by absentee ballot. Secondly, you inquire regarding whether the trustee, or the beneficiaries, of a land trust should be allowed to vote with respect to land held in the land trust. For the reasons hereinafter stated, it is my opinion that nonresident landowners are not entitled to vote for drainage district commissioners by absentee ballot. Further, it is my opinion that the beneficiaries of land held in a land trust, and not the trustee, should be permitted to vote in a drainage district election.

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Drainage district elections are held pursuant to section 4-5 of the Illinois Drainage Code (70 ILCS 605/4-5 (West 1998)), which provides for the holding of an election on the first Tuesday in September of each year to select a successor to the commissioner whose term will next expire. The commissioners give notice of the election, designate the place at which it will be held and serve as judges of election while the clerk of the circuit court publishes notice of the election, prepares the ballots and receives the results. Section 4-5 provides that "[e]very adult owner of land in the district shall be entitled to vote". Neither residence within the district nor voter registration is made a qualification for voting in a drainage district election. No reference is made to absentee voting or to voting based upon an interest in land held in land trusts.

In People ex rel. Seegren v. Sackett (1933), 351 Ill. 363, a case relating to a park district organizational election, the court discussed the issue of absentee voting as follows:

" * * *

Appellee further complains because votes cast in the election by absentee voters in favor of the establishment of the proposed park district were counted, alleging that they should have been rejected because the Park District act of 1895 made no provision for the use of the Absentee Electors law. (Cahill's Stat. 1932, chap. 46, pars. 150-158.) The wording of the Absentee Electors

law clearly reflects a legislative intent for it to apply to any special, general or primary election. The scope of the act is general, applying to all of the electors of the State. Its chief purpose is to prevent the disfranchisement of electors absent from their voting districts on the day of election. The act was made to apply to 'district' elections. As the word 'district' is commonly used in legislative acts pertaining to election matters it means 'any one of the various divisions or subdivisions into which the State is divided for political or other purposes.' (Olive v. State, 11 Neb. I, 7 N. W. 444.) An election held for the purpose of organizing and electing commissioners of a park district under the Park District act of 1895 is a district election, to which the provisions of the Absentee Electors law clearly apply.

* * *

People ex rel. Seegren v. Sackett (1933), 351 Ill. 363, 377.

Similarly, in Boyle v. Retirement Board of the Sanitary District Annuity and Benefit Fund (1968), 92 Ill. App. 2d 33, an unsuccessful candidate for election to the board of trustees challenged the retirement board's unwritten practice of mailing absentee ballots to employees who were ill, on vacation or whose hours of work made it impossible for them to cast ballots at designated polling places. The court observed that by statute any employee at the time of the election had the right to vote, and further stated:

" * * *

By providing absentee ballots for employees who were ill, on vacation or whose hours of work made it impossible for them to cast their ballots at the five designated polling places, the board was observing the letter as well as the spirit of this statute. To have done otherwise would have disenfranchised the 121 employees who voted by absentee ballot.

* * * "

Boyle v. Retirement Board of the Sanitary District Annuity and Benefit Fund (1968), 92 Ill. App. 2d 33, 36.

The "Absentee Electors law" cited in People ex rel. Seegren v. Sackett is now codified as article 19 of the Election Code (10 ILCS 5/19-1 et seq. (West 1998)). The language cited by the court has not changed significantly in the intervening years, but with the codification of the Election Code (10 ILCS 5/1-1 et seq. (West 1998)) and the inclusion of the consolidated election schedule, the General Assembly has defined the pertinent terms somewhat differently than they were understood in the court's opinion. For example, the term "election authority" now is defined to include only a county clerk or a board of election commissioners, and the term "district" is defined to exclude a unit of local government or school district (10 ILCS 5/1-3(8), 1-3(14) (West 1998)). Further, section 19-2.1 of the Election Code (10 ILCS 5/19-2.1 (West 1998)), which sets out the absentee

voting procedure, refers only to elections held on the consolidated schedule. Therefore, based upon these statutory changes, it must be concluded that article 19 is not now applicable to drainage district elections.

In Boyle v. Retirement Board, the board of trustees had been granted the authority to make rules for the conduct of the election in question. That authority, together with the statutory language making all current employees eligible to vote, apparently provided a sufficient basis, in the court's view, for the board to permit absentee voting. Section 4-5 of the Drainage Code, however, does not expressly grant the commissioners the authority to prescribe procedures for conducting elections. The commissioners are delegated specific duties with respect to giving notice of the election, designating the place at which it will be held and serving as election judges. It is the circuit clerk who publishes notice, prepares the ballots and to whom the ballots and tally sheets are returned. Nothing in section 4-5 of the Code suggests that the commissioners have any authority to permit voting by persons other than those who appear at the polling place during the hours when the statute permits the polls to be open. Based upon these factors, it is my opinion that absentee voting is not currently permitted in drainage district elections.

Secondly, you have inquired whether, with respect to land that is held in a land trust, the trustees or the beneficiaries may properly vote at drainage district elections. Section 4-5 of the Act provides that "[e]very adult owner of land in the district shall be entitled to vote". Subsection 1-2(i) of the Act (70 ILCS 605/1-2(i) (West 1998)) defines "owner" as follows:

" * * *

(i) 'Landowner' or 'owner' means the owner of real property and includes an owner of an undivided interest, a life tenant, a remainderman, a public or private corporation, a trustee under an active trust and the holder of the beneficial interest under a land trust, but does not include a mortgagee, a trustee under a trust deed in the nature of a mortgage, a lien holder or a lessee.

* * * "

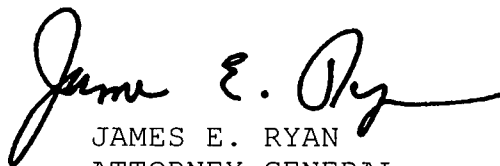
(Emphasis added.)

Based upon this definition, it is clear that the beneficiaries of a land trust, and not the trustee, are entitled to vote in drainage district elections. It will, however, be necessary for the judges of election to determine the nature of the interest of each person wishing to vote based upon ownership

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of land in trust, since the rule with respect to voting under an active trust is the converse.

Sincerely,

A handwritten signature in cursive script that reads "James E. Ryan". The signature is fluid and extends to the right with a long horizontal stroke.

JAMES E. RYAN
ATTORNEY GENERAL