Linda Willard

DEPARTMENT OF JUSTICE
STATE OF NEBRASKA • STATE CAPITOL
TELEPHONE 402/471-2682 • FAX 402/471-3297 • LINCOLN, NEBRASKA 68509-8920

ROBERT M. SPIRE
Attorney General
A. EUGENE CRUMP
Deputy Attorney General

#90035

STATE OF NEBRASKA
OFFICIAL
OCT 4 1990
DEPT. OF JUSTICE

DATE: October 3, 1990

SUBJECT: Public Examination of Applications for Absentee Ballots

REQUESTED BY: Allen J. Beermann, Secretary of State

WRITTEN BY: Robert M. Spire, Attorney General
Bernard L. Packett, Assistant Attorney General

This is in response to your inquiry concerning provisions of the election law in relation to the laws dealing with examination of public records.

In particular you ask if applications for absentee ballots are a matter of public record and open for examination, and if so for what period of time.

With regard to the examination of public records § 84-712 R.R.S. (Reissue 1987) provides:

> Except as otherwise expressly provided by statute, all citizens of this state, and all other persons interested in the examination of the public records, as defined in section 84-712.01, are hereby fully empowered and authorized to examine the same, and to make memoranda and abstracts therefrom, all free of charge, during the hours the respective offices may be kept open for the ordinary transaction of business.

Neb.Rev.Stat. § 84-712.01 then provides that public records "shall include all records and documents, regardless of physical form, of or belonging to this state, any county, city, village, political subdivision, * * * or any * * * commission, council, subunit, or committee of any of the foregoing. * * * "

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It seems quite clear from the above that applications for absentee ballots presented to a county clerk or election commission are indeed public records, and open to examination. The question remains for what period of time.

Section 32-499 R.R.S. (Reissue 1988) provides that following the balloting, and upon completion of the canvass of votes, "all books shall again be sealed AND TOGETHER WITH ALL APPLICATIONS, election supplies, absentee ballots, "etc." * * * shall be deposited in the office of the county clerk or election commissioner, where they shall be safely kept for not less than 50 days. * * *."

Section 32-499 then provides that the items referred to may not be inspected, "unless in case of contested elections, or the items become necessary to be used in evidence in the courts * * * at the end of which time THE SAME SHALL BE DESTROYED under the supervision of the county clerk or election commission." (Emphasis supplied).

From our examination of the above provisions of the Election and Public Records law, it is our conclusion that applications for absentee ballots are public records and as such are open to examination until, following the canvass of votes cast, they are deposited in the office of the county clerk or election commissioner for safe keeping. Furthermore, unless there is a contested election, or the items become necessary to be used in court, they must be destroyed fifty days later, without being subject to further examination.

Very truly yours,

ROBERT M. SPIRE
Attorney General

Bernard L. Packett
Assistant Attorney General

Approved By:

Robert M. Spire
Attorney General

22-69-6.2