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MEMORANDUM

DATE: April 23, 2007
TO: Washington County Election Commission
FROM: George E. Butler, Jr., County Attorney
RE: Counting of Absentee Ballot

A.C.A. § 7-5-416 regarding the counting of absentee ballots states in part:

“If the application and the voter statement do not compare as to the name, address, date of birth, and signature of the voter then the absentee ballot shall not be counted.”

There are no cases in Arkansas or elsewhere directly on point nor is there an Attorney General’s opinion on this subject.

Though the Arkansas Supreme Court stated in the case of Womack v. Foster 340 Ark. 124, 8 S.W.3d 854 (2000) that there must be strict compliance even with the technicalities of absentee voting, that case involved absentee ballots and/or applications that failed to state the reason for voting absentee or failure to attach the required medical affidavits. These requirements appear to be much more substantive than the issue at hand.

We know that the voter in question has listed 1630 Timbercrest as his address on more than one occasion as opposed to 1632 Timbercrest, which he listed on his application this one time. The discrepancies in the zip codes are in my opinion “de-minimus” also.

Given the general abhorrence of the courts to disenfranchise a voter, Mears v. City of Little Rock 256 Ark. 359, 508 S.W.2d 750; Ashcraft v. Cox, 310 Ark. 703, 839 S.W.2d 219; Cain v. Carllee, 169 Ark. 887, 277 S.W. 551 I do not feel that this minor discrepancy would withstand scrutiny if the ballot was not counted.

The Supreme Court of New York ruled in the case of Scranton v. Commissioners of the Saratoga County Board of Elections 549 N.Y.S.2d 347 that a ballot which had an address on the envelope that was substantially different from that on the registration card could

not be counted. However, a ballot that reflected a discrepancy in the route number of a voter's address appeared to be a mere juxtaposition of numbers and should be counted.

It is, therefore, my opinion that the ballot was properly counted and should be included in the certification of the election results.