A Proposal to Establish a Sure-Count Deadline for Absentee Ballots in Iowa

Iowa voters risk having their absentee ballots disqualified due to a recent change in Iowa administrative rules that depends on a system over which the State of Iowa has no statutory authority. *Code of Iowa* Section 53.17(2) requires that absentee ballots received in the office of the County Auditor after the polls close on Election Day must be "clearly postmarked by an officially authorized postal service not later than the day before the election…" However, previous to a 2011 Iowa Administrative Rules change, local absentee boards were allowed to open absentee return envelopes that did not meet the §53.17(2) threshold to consider the date written by the voter on the affidavit envelope to determine the ballot's eligibility. Due to the 2011 Administrative Rule change, absentee ballots received through the mail service without a postmark are automatically disqualified.

The lack of a "clear postmark" on return absentee ballots is a concern due to inconsistent postmarking practices throughout the state. Clinton County was forced to reject a ballot in the 2011 School Election due to the new postmark ruling. This prompted me to research postmarks placed on absentee ballot return envelopes. My office discovered that in the 2011 School Election, 15 envelopes received a postmark while 96 did not. (Ballots received on Election Day or earlier aren't subject to the postmark requirement). Because the number of envelopes without postmarks seemed alarmingly high in the School Election, I decided to review the returned absentee ballot envelopes from the 2010 General Election. The results were just as troubling. There were 4,239 absentee ballots returned by mail in the Clinton County 2010 General Election. Only 229 of those envelopes had been postmarked. Ninety-five percent of absentee ballot envelopes returned in Clinton County during the 2010 General Election did not receive a postmark. These results are typical around the state.

Although the postmark rule only applies to those absentee ballots that are received after Election Day, the Code of Iowa is depending on a system that is not consistent. The question must be considered: "Is this fair to the voter?" Is it fair to voters that their votes could be disqualified through no fault of their own? Is it fair to voters that their votes could be disqualified because the threshold to count their votes is based on an inconsistent system that is outside the control of Iowa law?

It is time to update the *Code of Iowa* to make the acceptance of absentee ballots consistent and reliable. It is time for the *Code of Iowa* to include a Sure-Count Deadline that will be easy to message and easy to follow consistently throughout the State. This provision would ensure voters that all absentee ballots returned to the County Auditor's office before the close of the polls will be counted. Ballots received after the close of the polls for that specific election would not be counted and the voters would be sent notification of their ballots' rejection and the reason for said rejection. (Note: This would not apply to the armed forces of the United States as defined in Section 53.37 of the *Code of Iowa*.)

Steps are in place which seek to ensure that absentee ballots cast by Iowa voters and returned to the County Auditor's office through the mail will be counted for that election. However, none of these steps has been consistently effective. As a reaction to the change in 2011, another rule was approved ahead of the 2012 Primary Election to add a "warning label" to the absentee ballot return envelopes. This warning label states the ballot will be counted if returned to the Auditor's Office before the polls are closed or if postmarked before Election Day if received after Election Day. It further states "Postmarks are not guaranteed!" Also in 2012, a representative of the U.S. Postal Service met with county auditors and staff during an Iowa State Association of County Auditors meeting and discussed the postmark issue. Following that meeting auditors were informed that Iowa post offices would make a concerted effort to postmark all absentee ballot return envelopes. The incidence of postmarks on absentee ballot return envelopes was nearly 100% for the 2012 General Election. However, the consistency ended with that election.

Auditors around the state were asked to keep track of postmarks in the 2013 School and City Elections. Auditors again reported sporadic results. Some counties reported 100% returned with postmarks, while others had much lower results. Scott County reported only 25 of 225 returned absentee ballots in its 2013 School Election bore postmarks. Scott County also noted that 21 absentee ballots were disqualified due to being received after Election Day without a postmark. (It is possible some of these would likely have been disqualified due to a late postmark, if properly marked.)

There appears to be no correlation between size of county and incidence of postmarks--while some smaller counties had 100 percent compliance (Clay 3 of 3, Cherokee 9 of 9, Boone 8 of 8 and Franklin 2 of 2), some larger counties also reported 100 percent compliance or close (Plymouth 85 of 85, Tama 41 of 41, Cerro Gordo 33 of 36 and Madison 143 of 143). The 2013 City Elections demonstrated the same inconsistencies...along with a concern for some envelopes that *did* receive a postmark. Here are a few samples of the inconsistencies: Mills County reported 22 of 33 postmarked; Tama County saw all 54 returned with postmarks; Iowa County received two with postmarks and three without postmarks; Clinton County reported 168 out of 187 received postmarks; Pottawattamie County counted 235 absentee ballots returned and none of them included a postmark; Boone County received 30, all with postmarks; and Story County received 11 out of 60 without postmarks. The Woodbury County Auditor's Office reported it had to reject 30 ballots in the Sioux City Primary Election due to a lack of a postmark. Other counties that had to reject ballots in the 2013 City Election due to a lack of a postmark include Fayette (2), Black Hawk (6), Allamakee (1) and Delaware (1).

County Auditors were also asked to track another statistic during the 2013 City Elections in regards to the postmark. They were asked to report how many postmarks were legible. Code of Iowa §53.17(2) states the postmark must be "clear." The Worth County Auditor's Office reported it received one returned absentee ballot with a postmark, but it was "questionable to read." It was questionable because of the placement of the postmark. The date of the postmark could not be read because it was blurred by the postage stamp it was placed over. (The example of that postmark is included with this report.) By the threshold prescribed in the *Code of Iowa*, if that ballot had been received after Election Day, it would have been rejected as the postmark was not "clear."

Some postal service clearinghouses don't utilize a traditional stamp to record a postmark. Some use a printer that provides a "digitized" postmark on the envelope. Some Auditors have reported this can cause a problem because it is sometimes difficult to discern a "5" from a "6" or a "6" from an "8" or a "7" from a "9." Not being able to read those numbers is troubling because many Election Days fall on those dates on the calendar.

Ringgold County reported it received four absentee ballots by mail during the City Election. Three of those four had postmarks, but all three were illegible. Grundy County reported postmarks on all 24 returned absentee ballot envelopes, but six of them were not legible. Franklin County reported it received 20 postmarked envelopes, but nine of those were not clear.

The 2014 General Election continued the trend of inconsistent postmark service, resulting in rejection of some ballots. Of the counties that reported statistics following the 2014 General Election, the following rejected ballots that were received after Election Day without a postmark (followed by the number of ballots rejected): Allamakee (4), Clayton (1), Jefferson (1), Kossuth (2), Lee (1), Palo Alto (11), Shelby (1) and Sioux (1). Postmark consistency was similar to that reported in the 2013 City. These results from the 2013 School and City Elections and the 2014 General Election highlight a major shortcoming of the law. This shortcoming is out of the hands of the voter and cannot be fully addressed by current Iowa law.

Solution
County Auditors, auditors' staff and absentee board election officials are uncomfortable notifying voters that their ballots were not counted because of something that is out of the voter's (and the auditor's) control. This started with the change in the administrative rule that prevented the absentee board from determining the qualification of an absentee ballot received after Election Day by reviewing the signature date on the affidavit envelope. That concern from election administrators, along with the fact that absentee ballot return envelopes have to have "warning labels," should make it abundantly clear that a better procedure is needed to address absentee ballots that are returned after Election Day.

Much brainstorming and discussion has gone into this issue. It's difficult to tell if the warning label has had any effect. Discussions with the USPS bore fruit in 2012, but this was temporary, as shown by subsequent elections. That begs the question, why determine qualification of a ballot to be counted in an election based on a system that is outside the jurisdiction of the *Code of Iowa*? This is not an indictment of the USPS. The USPS has had to economize, and greater efficiency through technology has rendered the age-old practice of applying a dated cancellation to postage obsolete. Other expected changes with the USPS will cause further review of Iowa Election Laws, but that discussion is for another paper.

The solution to this matter should be simple with easy enforcement that all Iowa voters and election administrators can recognize and adhere to across the state. After much discussion, debate and thought, I believe the solution to this issue is to establish a Sure-Count Deadline for returned absentee ballots. This proposal would take the qualification of an absentee ballot out of the hands of an inconsistent procedure and establish a clear rule that voters and election administrators can easily understand and enforce. This solution is supported by the Iowa State Association of County Auditors, which has for two years in a row made establishing a due date for absentee ballots a legislative priority. The proposal simply calls for a change to Iowa Code §53.17(2) to state that only ballots received in the County Auditor's Office before the polls close for that election will be counted. Any ballots received after the polls close for that election will not be counted.

This solution provides a simple rule that can be followed by all. Voters will know that ballots need to be into the Auditor's Office by the close of the polls and can take appropriate steps to ensure their votes are counted. Iowa would be far from the first to adopt such a measure. Iowa would also not have the strictest deadline. A recent study of absentee ballot deadlines showed that 39 states have a firm ballot receipt deadline. Three of those states, Louisiana, Mississippi and North Dakota, require the absentee ballot be returned the day before the election. One state, Pennsylvania, requires the absentee ballot to be returned the Friday before the election. The remaining 35 states have a receipt requirement of the day of the election. The fact that so many other states enforce due dates for absentee ballots shows that Iowa can make the right decision for its voters without worrying that it is blazing a controversial trail in the nation.

The Iowa State Association of County Auditors has for three years forwarded a legislative priority to change Iowa Code §53.17(2) to state that no absentee ballots received after the polls close on Election Day will be counted. The language change is simple: *"§53.17(2) In order for the ballot to be counted, the return envelope must be received in the commissioner's office before the polls close on election day or be clearly postmarked by an officially authorized postal service not later than the day before the election and received by the commissioner not later than noon on the Monday following the election."* This would not apply to the armed forces of the United States as defined in Section 53.37 of the *Code of Iowa*. This solution is sensible, easy to message, easy to administer and is not revolutionary. But most importantly, it will end the random disqualification of ballots cast by Iowa's voters.