



Commonwealth of Kentucky
Office of the Attorney General

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December 19, 2023

OAG 23-10

- Subject:* Whether the term “voting places” as used in KRS §117.065(2) includes the locations designated for in-person no-excuse absentee voting under KRS §117.076.
- Requested by:* Stephanie G. Shumacher
President of Kentucky County Clerks Association
- Written by:* Jeremy J. Sylvester, Assistant Attorney General
- Syllabus:* “Voting places” as referred to in KRS §117.065(2) does not include locations for in-person no-excuse absentee voting as allowed under KRS §117.076.

Opinion of the Attorney General

The Covid-19 pandemic forced election officials, both in Kentucky and throughout the nation, to implement emergency voting procedures to preserve citizen’s right to vote while attempting to minimize large crowds at the polls. In Kentucky, the Secretary of State and Governor implemented a plan that gave citizens the option to cast their votes early on several days before the traditional election day. Even though the pandemic waned, in 2022, the General Assembly enacted a law to permanently allow voters to cast no-excuse in-person absentee ballots. 2022 Ky. Acts ch. 87, §2 (House Bill 564). The Kentucky County Clerk’s Association (KCCA) now asks this Office whether the “voting places” mentioned in KRS §117.065(2) includes the location at which the citizens cast their in-person no-excuse absentee ballots. For

the following reasons, it is the opinion of this Office that KRS §117.065 only governs precinct poll locations designated for in-person voting on election day.

This question involves a matter of statutory construction. No court has opined on the interplay between KRS §117.065 and the recently enacted House Bill 564. However, “a statute will be construed so as to accomplish the purpose for which it was enacted.” *Chilton v. Gividen*, 246 S.W.2d 133, 135 (Ky. 1952). Moreover, a statute’s interpretation must be harmonized with its various subsections and even other relevant statutes governing voting. See *Jefferson Cnty. Bd. of Ed. v. Fell*, 391 S.W.3d 713, 719 (Ky. 2012) (“The particular word, sentence or subsection under review must also be viewed in context rather than in a vacuum; other relevant parts of the legislative act must be considered in determining the legislative intent.”); *Lewis v. Jackson Energy Co-op. Corp.*, 189 S.W.3d 87, 92 (Ky. 2005) (“The statute must be read as a whole and in context with other parts of the law.”). With these canons of construction in mind, the Office has examined the statutes at issue.

KRS §117.065 provides that “[t]he county board of elections shall, not later than September 20 of each year, establish the voting place for each precinct.” KRS §117.065(1). KRS §117.065(2) grants authority to “the county board of election to designate as voting places, without cost of the board, buildings constructed in whole or in part with tax revenues.” This provision has typically been used to set aside school facilities as polling places on traditional election days. See e.g., OAG 76-614 (noting that local school boards must “bow to the spirit and intent of KRS §117.065(2)” by making a portion of schools available as a polling place on election day). The KCCA posits that the term “voting places” should be read broadly to include locations designated for the casting of early in person no-excuse absentee ballots.

The General Assembly did not contemplate the novel concept of early in-person no-excuse absentee voting when it enacted KRS §117.065 decades ago. KRS §117.065 was enacted under the traditional voting scheme, whereby qualified citizens voted in-person on election day at the location designated for their precinct. See KRS §117.055 (noting that the county board must divide the county into election precincts such that each precinct contains approximately the same number of voters). KRS §117.065 uses the phrase “voting place for each precinct.” KRS §117.065(1). Moreover, the statute addresses what to do if a change becomes necessary on “election day” by stating that “notice shall be posted at the former voting place.” *Id.* It is clear that the General Assembly intended for the term “voting places” to refer to election day poll locations designated for each precinct in a county.

The General Assembly never expressed an intent that KRS §117.065 now applies to the recent innovation of in-person no-excuse absentee ballots. In fact, House Bill 564 did not amend or refer to KRS §117.065, or otherwise imply that in-person absentee ballots would be cast at a precinct location designated under that statute. 2022 Ky. Acts ch. 87, §2 (creating KRS §117.076). Rather, the General

Assembly expressed the opposite intent by creating a new section of KRS Chapter 117 with its own provisions concerning where voters are to cast their in-person no-excuse absentee ballots. KRS §117.076. Specially, “in-person voting shall be conducted in a location within the county clerk’s office where ballots shall be cast secretly.” KRS §117.076(4). The statute also states that “[i]n-person absentee voting may occur in another location within the county if the location is designated by the county board of elections and approved by the State Board of Elections.” *Id.* Thus, voters within a county are not directed to the precinct poll locations designated for election day voting. Every registered voter in a county, regardless of precinct, may vote at the designated in-person no-excuse absentee ballot location.

Long before the concept of early in-person absentee voting existed, the General Assembly granted county election boards the authority to use public facilities, to include public schools, as polling places under KRS §117.065. This statute could have contemplated only votes being cast in-person at designated precinct voting locations on election days. In granting this power, the General Assembly acknowledged that certain public facilities could not be used for their intended purpose on election days so that qualified citizens could exercise their right to vote. The General Assembly, however, did not express an intent for county election boards to also have the power to use public facilities on the three additional days required for in-person no-excuse absentee voting recently established under KRS §117.076(1). In fact, the General Assembly expressed a contrary intent by itself designating the locations where these absentee ballots should be cast. When reading these relevant statutory provisions together and in proper historical context, it is the Office’s opinion that the General Assembly did not intend to provide county election boards the authority to use public facilities for no excuse in-person absentee balloting.

For these reasons, it is the Office’s opinion that the “voting places” as used in KRS §117.065 refers to the places designated for precincts on election day. It does not apply to the locations designated by KRS §117.076 for early no-excuse in-person absentee voting.

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