

STATE OF MICHIGAN

DANA NESSEL, ATTORNEY GENERAL

CONST 1963, ART 2, § 4(1)(b): Extending the post-election, six-day
MICHIGAN ELECTION LAW: time period for the timely receipt of
absent voter ballots from individuals
in the military or living overseas
when the sixth day of the time period
falls on a holiday.

The post-election, six-day time period for election officials to timely receive absent voter ballots from individuals serving in the military or living overseas, that is established by the Michigan Constitution, article 2, § 4(1)(b), will be extended as provided in the Michigan Election Law, MCL 168.13(1), when that sixth day falls on a holiday.

Opinion No. 7327

Date: October 10, 2024

The Honorable Jocelyn Benson
Michigan Secretary of State
Richard H. Austin Building, 4th Floor
430 W. Allegan Street
Lansing, MI 48918

You have asked whether the post-election, six-day time period for election officials to timely receive absent voter ballots from individuals serving in the military or living overseas that is established by the Michigan Constitution, article 2, § 4(1)(b), can be extended when the sixth day falls on a holiday.

As you note in your request, Proposal 2022-2 incorporated several voting-related rights into the Michigan Constitution. One of those rights was for individuals “serving in the military or living overseas . . . to have their absent voter ballot deemed timely received if postmarked on or before election day and received

by the appropriate election official within six (6) days after such election.” Const 1963, art 2, § 4(1)(b). This year, the general election will be held on November 5th, and six days after the election will be November 11th, which is Veterans Day, a state and federal holiday on which mail will not be received and state and local offices are generally closed for business. Therefore, from a practical standpoint, the question is whether the deadline for receiving absent voter ballots from those serving in the military or living overseas can be extended by one day, to November 12th.

In interpreting constitutional provisions, “the first inquiry is to determine if the words have a plain meaning or are obvious on their face. If they are, that plain meaning is the meaning given them.” *Silver Creek Drain Dist v Extrusions Div Inc*, 468 Mich 367, 375 (2003).

Applying that principle here, while there is no language in article 2, § 4(1) that directly answers the question of whether an extension is allowed, there is plain and obvious language that provides clear direction as to where the answer may be found. In particular, the last paragraph of article 2, § 4(1), states, “Nothing contained in this subsection shall prevent the legislature from expanding voters’ rights beyond what is provided herein.”

The legislature has done just that. The Michigan Election Law (MEL) has a provision regarding the receipt of absent voter ballots from those serving in the military or living overseas that is substantively identical to article 2, § 4(1)(b):

If the absent voter ballot return envelope containing a marked absent voter ballot for an absent uniformed services voter or overseas voter is postmarked on or before election day and the absent voter ballot is received by mail by the city or township clerk within 6 days after the election, the city or township clerk shall consider that absent voter ballot timely received. [MCL 168.759a(18).]

But in contrast to the Constitution, the MEL answers the question you present by providing that “anything required by this act to be done by a day certain, if that day falls on a Saturday, Sunday or legal holiday, may be done within the same time limits on the next secular day.” MCL 168.13(1). Under that provision, because a requirement of the MEL (the receipt of military and overseas ballots) is to be done by a day certain (November 11th) that lands on a legal holiday (Veterans’ Day), the receipt of those ballots may be done on the next secular day (November 12th). In other words, by way of MCL 168.13(1), the legislature has “expanded” the rights of individuals serving in the military or living overseas by “enlarging” or “extending” the six-day time period for the timely receipt of their absent voter ballots when the sixth day of the time period falls on a holiday (or Saturday or Sunday).¹ Because the plain and obvious meaning of the Constitution allows the legislature to provide such an expansion, MCL 168.13(1) is consistent with the Constitution and must be applied.

This conclusion is also supported by other plain and obvious language contained in article 2, § 4(1). Specifically, the last paragraph of § 4(1) states, “This

¹ “Expand” can be defined as, “to increase the extent, number, volume, or scope of: enlarge.” And “enlarge” can be defined as, “to make larger: extend.”

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subsection shall be liberally construed in favor of voters' rights in order to effectuate its purposes." To construe article 2, § 4(1)(b) as not allowing for an expansion of the six-day time period when the sixth day falls on a holiday would not favor voters' rights but would instead restrict those rights by permitting voters in the military or living overseas to have only five days for election officials to timely receive their absent voter ballots. And reading article 2, § 4(1)(b) in the light of both sentences in the last paragraph of article 2, § 4(1)² makes it clear that the provision's purpose was to mandate six days as a *minimum* number of days for election officials to timely receive absent voter ballots from individuals in the military or living overseas, and a construction that provides for an expansion of the six-day time period when the sixth day falls on a holiday effectuates that purpose.

It is my opinion, therefore, that the post-election, six-day time period for election officials to timely receive absent voter ballots from individuals serving in the military or living overseas, that is established by the Michigan Constitution, article 2, § 4(1)(b), will be extended as provided in the Michigan Election Law, MCL 168.13(1), when that sixth day falls on a holiday.



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² "This subsection shall be liberally construed in favor of voters' rights in order to effectuate its purposes. Nothing contained in this subsection shall prevent the legislature from expanding voters' rights beyond what is provided herein."