

February 19, 1991

signature was there. Initially, the argument began or the discussion would begin with what is absentee voting under the Constitution, that is, is it a right or a privilege? Might kind of look at several other states as was brought to us and on our own and you can find where some state courts have held that in modern times that absentee ballot is becoming more of a right than the historical privilege. And I am inclined to probably agree with that. However, neither our statutes nor our Supreme Court of Nebraska has ruled differently, so I have come down on the side that, yes, absentee voting is a privilege, and, as such, can have certain limitations, requirements, both the voter and of the election officials, which would not be in place in the event if you were voting in person at the ballot location. The basis for this in public policy, of course, is to protect...the protection of the integrity of the ballot, protection of fraud, that is that fraud will not occur. And on that basis, then there have been spelled out, which, in some cases, are clearly mandatory provisions on the election officials and/or the voter. It becomes fairly simple, initially, when you look at that. Then you go to look at Nebraska court cases, which was brought to us and on our own, and then it becomes a little less clear. Consistently the court has held, the Nebraska court has held that, first, that voting absentee was a privilege, and then, secondly, that there must be strict instruction, which meant compliance with the law. Then, occasionally, they would modify that with the words "substantial compliance." Substantial compliance was not always as clear to me. It was clear to me from reading some of the statutes that there seemed to be a greater responsibility on election officials to be in compliance, strict compliance than perhaps with the voter. The problem with all of these court cases that I have looked at was that the facts are not the same as we have here. In many cases, the statutes are not the same as we have now, and when you look to other states, even if the same is true, I know that one of the cases that was right on from another state, Indiana, in which the requirement was for the signature and there were initials used and the court held that those ballots could be counted. One of the other things I have learned, or relearned, actually, as I have read all these briefs and opinions, is that you can be very selective when you are citing court cases to justify your point, which is apparently okay. But in that Indiana case in which it seemed on the surface to exactly fit the Nebraska case, but the statutes didn't, and it was interesting to me that the Indiana Supreme Court had the observation; it says it, and this is a quote. "It