

## Opinion No. 52-5505

March 7, 1952

**BY:** JOE L. MARTINEZ, Attorney General

**TO:** Honorable Beatrice B. Roach Secretary of State Santa Fe, New Mexico

{\*217} In reply to your letter of February 26, 1952, in which you request an opinion on the question of whether a County Clerk may accept an Affidavit of Registration if the said affidavit is in proper order and duly sworn to before a notary public by the applicant to register, even though the forms of such affidavit may have been obtained from a source other than the office of the said County Clerk, Section 56-217 of the 1941 N.M.S.A., reads as follows:

"Transfer of registration within county. -- Any elector who prior to thirty (30) days preceding any election changes his place of residence from one precinct to another within the county in which registered, may at any time up to thirty (30) days before any election make application for transfer of such registration before any registration officer in writing, directed to the county clerk of the county in which such elector is registered. The county clerk, upon receipt of such application shall remove the original affidavit of registration of such elector from such files and registration record and place the same in the binder or registration record of the precinct or election district to which such elector requested to be transferred, with a notation on such affidavit of such transfer, and said county clerk shall thereupon file said application for transfer in a special binder for that purpose. Notation of such transfer shall likewise be made on the duplicate of such affidavit."

This statute is mandatory that the County Clerk shall receive affidavits of registration at all times except that he or she shall close registration at 5:00 o'clock on the 30th day preceding any election at which time registration boxes are to be furnished to the judges of election, and shall re-open such registration on the Monday following such election.

This office has already held in Opinion No. 4482 written for Robert W. Reidy, Assistant District Attorney, Albuquerque, New Mexico on March 16, 1944 in which we held that any Notary Public may {\*218} secure registration blanks from the County Clerk or from any other source that he can obtain them, and register people in different precincts and then return the completed registration affidavits to the County Clerk, and the County Clerk shall receive said affidavits of registration.

It has come to our attention during the last three years that some County Clerks, either through ignorance of the Law, or prejudice, refuse to give affidavits to be taken out of the office especially if the party seeking to procure such affidavits of registration is of the opposite political party. However, it is my opinion that affidavits which are in proper order, acknowledged by a Notary Public, even though such affidavits are not obtained

from the County Clerk which has to register the voter have to be accepted by the County Clerk and the above quoted Statute makes it mandatory.

Trusting that this fully answers your inquiry, I remain