

Opinion No. 52-5563

July 14, 1952

BY: JOE L. MARTINEZ, Attorney General

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

{*274} In reply to your letter of July 7, 1952, in which you request an opinion as to whether or not the precinct election officers shall be paid for making a recount of votes in Precinct No. 17, Mora County, New Mexico, either per diem or mileage, and as to who shall pay them.

You do not state in your letter why the State Canvassing Board ordered the recount made, but in my conversation with Mr. Clark, he informed me that the election officials had omitted to make tallies and therefore had not completely tallied the results of the election as provided by law. Therefore, the fact {*275} that the election officials of Precinct No. 17 omitted to comply with the law in not tallying the votes that they committed an omission. Section 56-349, New Mexico Statutes Annotated, 1941 Compilation, the last paragraph of Section 5 on Page 1204 reads as follows:

"Where any such omission or negligence on the part of election officials makes necessary the incurring of additional expenses as herein provided, no compensation shall be allowed or paid to any election judge or clerk serving as a part of the election board in such election district."

It is therefore my opinion that since the omission to tally the results of the primary election was made by the election officials that they are not entitled to any compensation as provided in the above quoted statute and said statute is mandatory.

Trusting that this fully answers your inquiry, I remain,