

**Opinion No. 52-5603**

October 23, 1952

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

**TO:** Mr. Fabian Chavez, Jr. State Representative Santa Fe, New Mexico

{\*314} This is in reply to your letter of October 22nd in which you request an opinion from this office as to whether or not under our present election laws stickers can be used to facilitate the election of a write-in candidate. Such stickers to have the name of the write-in candidate printed on them and the electorate will simply place them on the blank space or spaces provided for on the ballot or voting machine in the instances of write-in candidates.

The pertinent part of § 56-306 NMSA 1941 Compilation reads as follows:

"It shall be the duty of each county clerk to provide printed ballots for each election and to cause to be printed on the ballot the name of every candidate which has been certified and filed with the county clerk in the manner herein provided, such ballots to be printed and in the hands of the county clerk at least twelve (12) days before such election. Ballots other than those printed by the county clerks as herein provided shall not be cast, counted or canvassed in any election; **but nothing herein shall prevent any voter from writing on his ballot the name of any person for whom he desires to vote for any office in the manner hereinafter provided,** and such vote shall {\*315} be counted the same as if such name were printed on the ballot . . . (Underlining supplied).

Under this statute there is no question that a voter can write in the name of any person for whom he desires to vote for any office at the coming general election.

As to the use of stickers, I call your attention to § 56-307 NMSA, 1941 Comp., on page 1163, under the heading of "Instructions":

"Mark with pen and ink or indelible pencil a cross in the O under the party name and emblem of the party for all or most of whose candidates you wish to vote, and if you wish to vote for any candidate other than a candidate whose name appears in the column under such O mark a cross in the first [] to the right of the name of the candidate in any other column for which you wish to vote. **If you wish to vote for a person whose name is not printed on the ballot, write his name on the blank line under the designation of the office in any column and make a cross in the first [] to the right of the name that you write in.** If you do not wish to make a cross in the first [] to the right of the name of each candidate or person for whom you wish to vote." (Underlining supplied).

The voters must follow the instructions given therein if they wish to write in a name and vote for a person not named on the ballot.

In Vol. 45 of **Words and Phrases** on Page 570, under the heading of Printing, Typewriting, Engraving or Lithographing, the word "writing" is defined as follows:

"Typewriting and printing are kinds of 'writing'. **Anderson vs. Commonwealth, Ky., 121 S.W. 2d 46, 47.**

"A written statement includes a printed form with its blanks properly filled in in writing. **Winn v. State, 5 Tex. App. 621, 623.**"

On the basis of the above mentioned statutes, and the cases cited it is my belief that printed stickers can be used to facilitate the write-in method of voting for a candidate.

In my opinion the stickers having the name of the write-in candidate printed on them may be used and the voters allowed to place them on the empty space provided for on the ballot or voting machine, and the votes so cast may be counted as valid by the election and canvassing officials.

I trust that this fully answers your inquiries.