

Opinion No. 53-5737

April 17, 1953

BY: RICHARD H. ROBINSON, Attorney General

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

{*134} This is in answer to your request for an opinion upon the question of whether or not voting machines may be used at election of precinct officers such as justices of the peace and constables.

Section 38-102 N.M.S.A., 1941 Compilation, Laws 1937, Ch. 71, provides that in elections for justices of the peace and constables such elections shall be by ballot, in the same manner as ballots for other county officers. Section 56-387 N.M.S.A., 1941 Compilation, as Amended, provides that the provisions of all other laws relating to the conduct of election shall so far as practical apply to the conduct of elections where voting machines are used.

Act. 7, Section 5 of the Constitution of the State of New Mexico requires that all elections shall be by ballot. The courts on having this question before them in other jurisdictions have determined that a voting {*135} machine satisfies constitutional or statutory requirements of a ballot. The weight of authority upholds the validity of the use of voting machines. **Mooney vs. Phillips, 173 Tenn. 398, 118 S.W. 2d. Md. 667, 192 A. 531; Reynolds vs. Dallas County 203 S.W. 2nd 320; State vs. Keating, 53 Mont. 371, 163 Pac. 1156; State of Ohio vs. Green, 121 Ohio St. 31, 168 N.E. 131, 66 ALR 849.**

There have been no decisions of the Supreme Court in the State of New Mexico upon this question, but at the present time in Cause No. 5559, Shoup Voting Machine Corporation vs. Board of County Commissioners, this question is before the Court.

In is therefore the opinion of this office that voting for justices of the peace and constables may be properly conducted by voting machines where all other provisions of the law applicable to the installation and operations of voting machines are observed.

We trust that this fully answers your inquiry.

By: William J. Torrington

Assist. Attorney General