

Opinion No. 53-5819

September 25, 1953

BY: RICHARD H. ROBINSON, Attorney General

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

{*228} In your letter dated September 23, 1953, you inquire whether Constitutional Amendment No. 10 was validly passed by the special state election held September 15, 1953.

This amendment proposes to amend Article 7, Section 4, of the Constitution to authorize absentee voting. You state that the amendment was approved by a simple majority in the state, and that in at least twelve counties it failed to carry by a two-thirds majority. If the amendment, in effect, amended or attempted to amend Article 7, Section 1, of the Constitution, the same is required under Article 19, Section 1, to be approved by a majority of at least three-fourths of the electors voting in the whole state and at least two-thirds of those voting in each county before the same would become effective.

In 1920, a proposed amendment to the Constitution was submitted and voted upon as Section 6 of Article 7, an entirely new and additional section, in which it was proposed to authorize absentee voting. The Supreme Court, in *Baca v. Ortiz*, 40 N.M. 435, 61 P. 2d 320, held that this proposed amendment was not validly adopted by the people since it was not approved by the majorities required to amend Article 7, Section 1, and that although it appeared as a separate section, it actually violated Section 1 and would have to be approved by the required majorities to amend Section 1. In *Thompson v. Scheier*, 40 N.M. 199, 57 P. 2d 293, the court held that the statute making the amendment, submitted in 1920, effective, was also unconstitutional, and these decisions were followed in *Chase v. Lujan*, {*229} 48 N.M. 261, 149 P. 2d 1003.

It is therefore, apparent that regardless of the fact that Section 4 of Article 7 was purportedly submitted for amendment, that such amendment would conflict with Section 1 of Article 7 and would require the majorities necessary to amend Section 1.

This office is compelled to rule that Constitutional Amendment No. 10 was not validly passed with the required majorities and is, therefore, not effective in view of these Supreme Court decisions as they presently exist.

By: C. C. McCulloh

Assist. Attorney General