

Opinion No. 56-6367

January 19, 1956

BY: RICHARD H. ROBINSON, Attorney General

TO: Natalie Smith Buck, Secretary of State, Santa Fe, New Mexico

Recently you have sent inquiries to our office concerning several questions of interest to you relating to the election laws. Each of these will be answered in this Opinion.

Question No. 1: Ch. 218, L. 1955, provides that proclamation notices must be published in both English and Spanish in four daily newspapers of general circulation within the State, and also provides that the county clerks must publish certain information on two separate occasions in both English and Spanish. You state that in several counties of the State that no newspaper is published in the Spanish language.

Answer: § 3-3-1, N.M.S.A., 1953 Comp., provides that in the event no legal newspaper is published in the county, the proclamation shall be published in some legal newspaper having general circulation in the county. This section further provides for posting of the notices in two conspicuous places in each precinct.

We believe that the only interpretation that can be given, in construing this section with § 7, Ch. 218, L. 1955, is that if no newspaper in the county publishes in the Spanish language, or if there are not as many as four newspapers of general circulation in the State that will publish the notices in Spanish, that it must be assumed that no legal newspaper is published in compliance with this requirement.

Thus the Spanish section should be published in every newspaper that will publish in the Spanish language, up to four, by the Secretary of State and in every newspaper in the county which will publish in the Spanish language. This will enable the county clerks to meet that requirement. In the event no newspaper is published or circulated in that county which will handle the Spanish publication, then and in that event the posting provision will be the only method by which the law can be complied with.

Question No. 2: §§ 1 and 2, Ch. 260, L. 1955, provide for consolidation of voting divisions within a precinct in primary and special elections. You inquire when this may be done. You will note that these provisions are for both primary and special elections and the question will be answered to take care of both types of elections.

Answer: The consolidation would necessarily have to be done by the county commissioners prior to the notice of election which is required to be published. We believe that this can be done at any time prior to publication of this notice.

Question No. 3: § 25, Ch. 218, L. 1955 (§ 3-11-60, N.M.S.A., 1953 Comp.) provides that the limitation on expenditures for various offices shall not exceed the statutory

amount in that section. You inquire whether the \$ 500.00 limitation in that section for district judges is a total of \$ 500.00 legal expenditure or whether it is \$ 500.00 per county?

Answer: The section reads, in part, as follows:

"For district judge, district attorney, state senator, state representative, and **any other office** for which the electorate of a county or a sub-division of a county shall vote not exceeding \$ 500.00."

This indicates, as does the whole tenor of the section, that the limitation on expenditures for the offices mentioned is specified. The office of district judge in this statute is limited to a \$ 500.00 expenditure and that expenditure is not permitted in each county by the person seeking the office.

Thus it is the opinion of this office that \$ 500.00 is the limitation upon expenses in any campaign for district judge or district attorney.

Question No. 4: § 3-3-20 (9), N.M.S.A., 1953 Comp., requires the insertion on the affidavit of registration of the ballot number. You inquire what number is used when voting machines are in use.

Answer: The voting machine tabulates the number of votes cast on that machine. The number to be inserted would be the number in sequence that the voter would constitute in that polling place. The poll clerks who are charged with the duty of operating the voting machines have access to the number and at the time the curtain is closed on the voting machine, that number can be called to the attention of the voting officials. In precincts or divisions where more than one machine is used, a tabulation will necessarily be required to be kept in a continuous manner so that each person can be given a number, which number should be placed on his affidavit of registration.

Question No. 5: You inquire who accompanies persons who are incapacitated and entitled to assistance in voting booths and voting machines under § 3 - 11 - 48, N.M.S.A., 1953 Comp., 1955 p.s.

Answer: The section above cited reads, in part, as follows:

"The poll clerk or clerks **of the political party** of the voter shall accompany any voter requiring assistance in the marking of his ballot and who has signed an assistance affidavit, into the voting booth and in the presence of each other assist said voter in the marking of his ballot."

This is a change from the previous law on primary elections in which the election officials of both parties had to accompany the voter. This is no longer required in primary elections, but is still in force in general elections.

We have previously held that for the purpose of this section that a voting machine is a voting booth and, in compliance with that law, a voter who is blind or otherwise infirm may be assisted in a voting machine. This requires only the poll clerks of the party of the voter to do the assisting.

We sincerely hope that the above answers the various questions presented to us and that our method of answering is satisfactory to you.

By Fred M. Standley

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