

**Opinion No. 56-6415**

April 6, 1956

**BY:** RICHARD H. ROBINSON, Attorney General

**TO:** Mrs. Natalie Smith Buck, Secretary of State, State Capitol Building, Santa Fe, New Mexico

You have submitted the following problem to this office:

Section 3-3-24, N.M.S.A., 1953 Compilation, requires the Secretary of State to keep on hand a sufficient supply of ballot boxes to be supplied to each county as needed. You state that once a supply of ballot boxes is purchased by your office the funds are apparently irrevocably lost to the use of your office, since all payments received from the counties in payment for ballot boxes as they are needed, go to the General Fund and cannot be used to replenish the supply. You ask how you can obtain additional funds to purchase new ballot boxes as they are needed.

Section 3-3-24, N.M.S.A., 1953, reads as follows:

**"It shall be the duty of the secretary of state to keep on hand a sufficient supply of ballot boxes** of the type and style specified in section 41-321, New Mexico Statutes Annotated, Compilation of 1929 (3-3-23), and of diverse padlocks of the pin tumbler type using paracentric keys, and to supply said boxes and locks to the several counties of the state as the same may be needed. The ballot boxes and padlocks used throughout the state shall be of uniform design. As ballot boxes or locks are needed in any county, they shall be supplied to the county clerks on requisition by said clerk upon the secretary of state, the expense of said boxes and locks to be paid by each county to which such supplies are furnished."

The first part of this section, being in mandatory language, it follows that your office must anticipate the need and expend your funds for any additional boxes needed to maintain a sufficient supply on hand. While it is true that these funds are irrevocably lost to your office, it is a matter which you must anticipate and include in your appropriation requirements. This, we are sure, you have been doing in the past and we see no other alternative.

Of course, should an emergency arise the Board of Finance could be approached about this problem.

By: Jack A. Smith

Assistant Attorney General