

Opinion No. 58-40

February 21, 1958

BY: OPINION OF FRED M. STANDLEY, Attorney General Robert F. Pyatt, Assistant Attorney General

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

QUESTION

QUESTIONS

1. What is the statutory deadline for registration in municipal elections, in order to vote?
2. What is the statutory deadline for registration in school board elections, in order to vote?

CONCLUSIONS

1. Five o'clock P. M., on the 30th day preceding election.
2. Five o'clock P. M., on the 30th day preceding election.

OPINION

ANALYSIS

The subject of your first question has caused this office to render several opinions. However, because of apparent conflict in two of them, as well as intervening statutory amendment, we appreciate this opportunity to clarify the matter.

Section 3-2-19, N.M.S.A., 1953 Comp., 1957 Supp., provides:

"The county clerk shall receive affidavits of registration at all times except that he shall close registration at five (5) o'clock P. M., on the thirtieth day preceding any election at which the registration books are to be furnished to the judges of election and shall reopen such registration on the Monday following such election. During the period when registration is closed, the county clerk may receive affidavits of registration and other documents pertaining thereto but shall not file the same in the registration books until such time as registration is reopened at which time the triplicate affidavit of registration shall be mailed to the registrant at the address shown by his registration affidavit,"

and Section 3-2-28, N.M.S.A., 1953 Compilation, reads:

"For the purpose of municipal elections, the clerk of each incorporated municipality shall obtain from the county clerk the original affidavits of registration for all precincts and election districts in whole or in part within such municipality at least three (3) days prior to any municipal election and such original affidavits of registration as show on their face that the elector is a resident within the limits of such municipality shall constitute the registration list for such municipal election. Said affidavits of registration shall be returned to the county clerk upon the close of such municipal election as other supplies are required to be returned by election officials at general elections."

Thus is presented the problem of whether the 30 day or 3 day provision is controlling.

In Opinion of the Attorney General No. 3359, rendered December 21, 1939, the Honorable Filo M. Sedillo held that Laws 1939, Ch. 152, § 15, now compiled as § 3-2-19, supra, had no reference to municipal elections, and that at municipal elections electors could continue to register up to 3 days before the municipal election. However, at that time the Session Laws above cited employed the language ". . . primary or general election . . .", instead of the present terminology. In other words, while General Sedillo did not expressly say so, elections **other** than primary or general were inferentially **excluded** by the **then** present terms of the statute.

Subsequently, and after the language ". . . primary or general election . . ." had been deleted, the Honorable C. C. McCulloh, in Opinion of the Attorney General No. 5128, dated February 12, 1948, construed Sections 3-2-19 and 3-2-28, among others, and held as follows:

"From the reading of these three sections, it is apparent that original registration can only be made by a person residing within the municipality at least thirty days before the municipal election and that the county clerk should close the books for original registrations thirty days before such municipal election."

We agree with the latter opinion but in doing so, take no issue with the former, since it doubtless correctly stated the law at the time. We realize that at the time Opinion No. 5128 was rendered, the second sentence in Section 3-2-19 had not been added. However, we do not believe it changes the result of that opinion insofar as this question is concerned. Of course, said sentence authorizes receipt by the county clerk of registration affidavits after the registration has been closed. But we do not believe it authorizes one to file his affidavit of registration after registration has been closed, and then vote in the municipal election. To hold otherwise disregards the plain, mandatory language of the first sentence that registration shall be closed on the thirtieth day preceding election. It would further disregard the fact that when the second sentence was added by virtue of Laws 1955, Ch. 148, Section 2, Opinion No. 5128 was presumably known by the legislature and nothing was done to alter it.

For an independent reason however, we favor the view expressed in No. 5128. This for the reason that Section 3-2-19 deals with the **closing of registration** while Section 3-2-28 partakes more of the **time when the city clerk shall obtain the affidavits of**

registration from the county clerks. The latter statute is not in terms one dealing with the close of registration. We see nothing anomalous in closing registration before the affidavits are temporarily furnished the municipal clerk.

Turning to your second question, we assume you have no reference to either county school boards or union high school boards since membership thereon is appointive, not elective. See Sections 73-9-4, and 73-11-4, N.M. S. A.. 1953 Compilation.

As to the governing board of independent rural school districts, Sec. 73-9-16, N.M.S.A., 1953 Compilation provides that the procedure for election of board members shall be the same as in municipal school elections. Turning to Section 73-10-5, N.M.S.A., 1953 Compilation, we find it provides as follows, insofar as here material:

"On the first Tuesday in February in each odd numbered year, the qualified electors of the district and territories attached thereto for school purposes shall elect at large one (1) or two (2) members of the said boards as the case may be (except as provided in the section next preceding) to succeed those now holding office whose terms expire. Said election shall be called by the municipal board of education and **shall be called, conducted, returned and canvassed by said board as in the case of officers in the respective incorporated cities, towns, and villages. * Registration books showing qualified voters must be used as in general election.**

The statutory requirement of use of registration books was not always present, as pointed out in prior opinions of this office. However, it is now and must be followed. Having reference to the statute, especially the emphasized language, as well as those authorities cited in the analysis on the first problem, we reach a like conclusion.