

Opinion No. 58-53

March 12, 1958

BY: OPINION OF FRED M. STANDLEY, Attorney General Joel B. Burr, Jr., Assistant Attorney General

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

QUESTION

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1. Under Chapter 217 of the Laws of 1957, will it be necessary for county clerks to provide ballot boxes for each voting machine polling place?
2. Must a special tally form be originated and supplied for the counting of absentee votes at a machine polling place?
3. Under the provisions of this Act will it be necessary to supply voting machine polling places with appropriate envelopes for challenged absentee votes?

CONCLUSION

1. Yes.
2. Yes.
3. Yes.

OPINION

ANALYSIS

Chapter 217 of the Laws of 1957, being Sections 3-14-11 to 3-14-32, N.M.S.A., 1953 Compilation, (P.S.) was enacted to permit federal personnel and members of the armed forces and their families who are qualified electors of New Mexico, but absent from the place of their voting residence, to exercise their voting franchise.

The answer to questions 1 and 3, may be found at Section 3-14-28, N.M.S.A., 1953 Compilation, (P.S.) which provides as follows:

"The election officials of the precinct of the voter's residence, upon determining that the oath required of the voter has been executed and that it is in order, shall then open the official inner envelope and promptly remove the ballot and immediately place each ballot in the ballot box in such a manner that no person may see how the particular

ballots are voted. **Upon placing the absentee ballots in the ballot box**, the election officials shall compile a voting list of the names appearing on all the inner envelopes in the poll books inserting 'absentee voter's ballot' in lieu of ballot number in which they provide a list of all persons voting personally in the precinct. No person other than the appropriate precinct election officials shall open an official inner or outer envelope purporting to contain a ballot under this act.

"Upon opening of the inner envelopes, watchers appointed by either political party shall be entitled to observe the performance of the procedure detailed in this section.

"In counting absentee ballots, the election officials of the precinct shall proceed in the same manner as in counting all other ballots.

"A legally constituted challenger, judge, or clerk of election shall, prior to the opening of the inner envelope, have the right to examine the inner envelope, and have the right to challenge the vote of any voter in the same manner and for the same reasons as other votes are challenged, and, in addition to grounds for challenge now existing, an envelope containing an absentee vote that appears to have been opened may be challenged, and the election officials shall, upon the challenge of a ballot, follow the same procedure concerning the challenged ballot as they do when ballots are challenged when a person attempts to vote in person at the polls; **Provided, that in the event the challenge is sustained, the inner envelope shall not be opened, but the inner envelope, together with its contents, shall be placed in the envelope provided for challenged votes.** The same procedure shall be followed in canvassing the challenged votes and determining the validity of the challenged votes as is followed in connection with all other challenged ballots." (Emphasis supplied.)

A reading of the above statute clearly indicates that the Legislature intended that all absentee ballots, upon receipt by election officials, be placed in ballot boxes until the closing of the polls at which time they are to be counted. It therefore follows that it will be necessary for county clerks to provide ballot boxes for each voting machine polling place.

Reference is also made in the above section to certain envelopes to be provided for challenged votes. In view of this provision, appropriate envelopes must also be supplied to all voting machine polling places.

The Act makes no provision for a tally form to be used in tabulating all absentee ballots. Tally forms are presently being supplied at all polling places in which individual ballots are being manually tabulated. In those polling places which contain voting machines no tally forms have heretofore been necessary inasmuch as the votes are automatically tabulated by the voting machine. Since there is the possibility that voting machine polling places will receive some absentee ballots, it follows that in order to give effect to all the provisions of the Act, some provision must be made for the tabulation of said ballots.

This office therefore concludes that the officer charged by law with the duty of supplying all polling places with the appropriate election supplies must make available to all voting machine polling places the necessary ballot boxes, special tally forms, and envelopes for challenged votes to the end that all absentee ballots may be properly processed as provided for in Chapter 217, Laws 1957.