

Opinion No. 60-140

August 9, 1960

BY: OPINION of HILTON A. DICKSON, JR., Attorney General

TO: Honorable Oscar Beasley State Representative Bernalillo County 2314 Kimo Drive
N.E. Albuquerque, New Mexico

QUESTION

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Does § 3-3-34, N.M.S.A., 1953 Comp., relating to the duties of election poll clerks, apply to school bond elections insofar as such section prohibits such clerk from divulging how a person voted?

CONCLUSION

Yes.

OPINION

{*518} ANALYSIS

Under the provision of § 73-8-27, N.M.S.A., 1953 Comp., relating to the appointment of election {*519} judges and clerks for the conduct of school bond elections, the judges and clerks so appointed are required to take the oath prescribed by law for the qualification of election officers in general elections. This is the only section in the statutes correlating the duties of election officials in school bond elections with those of election officials in General Elections.

The oath referred to in § 73-8-27, supra., is the oath referred to in § 3-3-18 which reads as follows:

"Oath of precinct election officials. -- At all elections held within the state at large, whether general, special or primary elections, each and all of the election officials serving in each precinct shall sign the certificate required by law to be printed upon the back of the poll books, and each and all of said election officials shall also sign the certificate required by law to be printed on the back of the tally books of said precinct, and by so signing, each election official shall be deemed to have taken and subscribed to an oath that he will discharge and has discharged the duties of his respective office faithfully and impartially."

Although neither of the oaths so referred to (set out in full in § 3-3-20) specifically set forth that all the duties of the officials are to be performed faithfully and impartially, the

underscored language of § 3-3-18 undoubtedly makes such requirements as part of the oath so taken.

In addition, the poll clerks, pursuant to § 3-3-35, are also required to take an oath before the judges of the election to the effect that they will faithfully and impartially discharge the duties of the office of poll clerk to the best of their ability. In our opinion, this section is also incorporated by reference into the above-cited provisions of § 73-8-27.

The duties of a poll clerk at General Elections are defined in § 3-3-34. One of these duties is a positive prohibition on the part of any such clerk to divulge the vote of any person who voted at such election. In our opinion, this prohibition applies to school bond elections. Section 73-8-27 requires that certain oaths be taken. These oaths require that certain duties be performed. One of these duties, as concerns poll clerks, is the prohibition above referred to. Therefore, it is inescapable that such a prohibition applies to poll clerks at school bond elections.

By: Philip R. Ashby

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