

Opinion No. 60-210

November 4, 1960

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

TO: Honorable J.B. McCoy State Representative, Bernalillo County 1522 San Carlos Drive, S. W. Albuquerque, New Mexico

QUESTION

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Are employees who are registered voters entitled to two hours off from employment during working hours for voting purposes, if their working day ends at 4:30 o'clock P.M., on election day?

CONCLUSION

Yes.

OPINION

{*627} ANALYSIS

Section 3-10-7, N.M.S.A., 1953 Compilation, reads as follows:

"Any registered voter may on the day of election absent himself from employment in which he is engaged, for two (2) hours, between the time of opening and closing the polls, for the purpose of voting and shall not be liable to any penalty therefor, but the employer may specify the hours during which he may absent himself; provided, that this right shall not be extended to an employee when his work day commences more than two (2) hours subsequent to the opening of the polls, or ends more than three (3) hours prior to the closing of the polls, . . ."

The polls close at 7:00 o'clock P.M. See Section 3-3-27, N.M.S.A., 1953 Compilation. An employee who is a registered voter is entitled to two hours off during working hours if his working day ends less than three hours before the closing of the polls. Thus, unless the working day of the employee ends before 4:00 o'clock P.M., of election day, then that employee is entitled to two hours off to vote during working hours. It is clear that if the working day of the employees in question ends at 4:30 o'clock P.M., then they are entitled to absent themselves from employment for two hours during working hours to vote. This answer, of course, assumes that the working day in question does not begin more than two hours after the polls open.

By: Norman S. Thayer

Assistant Attorney General