

## Opinion No. 60-74

April 13, 1960

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

**TO:** H. Leslie Williams Assistant District Attorney Second Judicial District County Court House Albuquerque, New Mexico

### QUESTION

#### QUESTIONS

1. Where two voting machines are used and four judges and four poll clerks are permitted, may more than two judges and two poll clerks belong to the same political party?
2. Where three voting machines are used, and five judges and four poll clerks are permitted under § 3-4-26, N.M.S.A., 1953 Comp. (P.S.), does the Board of County Commissioners have the power to appoint such five judges from the two dominant political parties?

#### CONCLUSIONS

1. No more than two judges may belong to the same political party and at least one poll clerk must be appointed from each of the dominant political parties.
2. The Board of County Commissioners may not appoint five judges from two political parties.

### OPINION

#### {\*434} ANALYSIS

The method of selecting poll clerks is set out in § 3-3-32, N.M.S.A., 1953 Compilation. The provisions of that section require that:

"One (1) of such poll clerks and one (1) alternate shall be of each of said dominant political parties."

Therefore, if four poll clerks are appointed pursuant to the provisions of § 3-4-25, N.M.S.A., 1953 Comp. (P.S.) and § 3-3-32, N.M.S.A., 1953 Comp., three of the poll clerks may be from the same political party since the only requirement is that at least one be from each party. However, when dealing with the appointment of election judges, we must be guided by Article VII, § 1 of the Constitution of the State of New Mexico. This Article provides, in part, as follows:

"Not more than two members of the board of registration and **not more than two judges of election shall belong to the same political party** at the time of their appointment." (Emphasis ours).

This constitutional prohibition is clear and unambiguous. The Board may not appoint more than two judges of election who are members of the same political party.

Section 3-4-26 provides that where three voting machines are used, five election judges and four polling clerks are permitted. This section of the statutes is not to be declared unconstitutional because it provides for five election judges, even though the fact that only two dominant political parties exist in New Mexico makes it impossible to appoint five judges.

The existence of one, two, three or more political parties in the State would control the application of this statute but would not determine its constitutionality. Since the Constitution forbids the appointment of more than two election judges from the same political {<sup>\*435</sup>} party, and since, at the present time, only two major political parties are recognized in New Mexico, the application of Article VII, § 1 will be to limit the appointment of the number of judges for the coming election or elections to four per voting precinct. If, at any future date, a third major political party comes into existence in the State of New Mexico, this statute could be applied without violating Article VII, § 1 of the Constitution in that the Board could at that time appoint at least five judges. The Board would still be limited to appointing not more than two judges from each dominant political party. However, with only two dominant political parties in existence, the Board may appoint a maximum of four judges, at least two of which must be from the Republican and two from the Democratic Party. See also Attorney General's Opinion No. 5290.

By: B. J. Baggett

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