

## Opinion No. 62-45

March 16, 1962

**BY:** OPINION OF EARL E. HARTLEY, Attorney General

**TO:** Mrs. Betty Fiorina, Secretary of State, Capitol Building, Santa Fe, New Mexico

### QUESTION

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1. Does Attorney General Opinion No. 60-61 dated March 30, 1960, which refers to the method of placing candidates names on the ballot apply to voting machines?

#### CONCLUSION

1. No.

### OPINION

#### ANALYSIS

The above referred to opinion applies only to paper ballots, as described in Section 3-11-47, N.M.S.A., 1953 Compilation (PS).

The statutes make very clear distinction between "ballots" and "ballot labels". Ballots obviously refer only to the form of ballot to be used where voting machines **are not** being used, and are commonly referred to as paper ballots. Ballot labels as described in Section 3-4-7 and Section 3-11-47.1 refer to the labels to be placed on voting machines.

Under Section 3-4-7 it is the duty of the Secretary of State to determine in each general election the positions of the places on the ballot labels and also the position on the ballot labels of any constitutional amendments, questions and the names of candidates to be voted on. Section 3-11-47.1 requires the County Clerks to submit to the Secretary of State at least 45 days prior to each primary election, a proposed facsimile diagram; which diagram shall be approved or corrected as to form, including the position number, preceding each name, which has been drawn by each candidate, and arrangement, including the arrangement of candidates' names in keeping with the order determined by lot by the Secretary of State in keeping with the requirements of law; provided, such approval or correction to be given or made not later than 30 days before each election. There is the further provision of the primary election laws that general election laws are to be followed unless otherwise provided in the primary election law or inconsistent with the provisions of that Act.

In view of the legislative directives with reference to the preparation of ballot labels, we conclude that it is the duty of the Secretary of State to make such directives as will provide uniform ballot labeling for the use of voting machines throughout the State, for both the general election and primary election.