

Opinion No. 62-47

March 22, 1962

BY: OPINION OF EARL E. HARTLEY, Attorney General Oliver E Payne, Assistant Attorney General

TO: Mrs. Patty G. Armijo, Valencia County Clerk, County Court House, Los Lunas, New Mexico

QUESTION

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Should the Valencia County Clerk accept the registration for voting purposes of untaxed reservation Indians?

CONCLUSION

Yes.

OPINION

ANALYSIS

Your question arises since, as you mention, Section 3-2-51, N.M.S.A., 1953 Compilation, provides as follows:

"Every citizen of the United States who is over the age of twenty-one years and has resided in the state twelve months, in the county ninety days and in the precinct in which he offers to vote thirty days, next preceding the election, **except Indians not taxed**, shall be qualified to vote at all elections for public officers and upon constitutional amendments." (Emphasis added).

Actually, Article VII, Section I of the New Mexico Constitution contains an identical restriction on the right of untaxed Indians to vote. However, a three-judge federal district court sitting in **Trujillo v. Garley**, U.S. District Court, Civil A. No. 1353, entered a declaratory judgment on August 11, 1948, holding that Indians in New Mexico are entitled to register and vote, the provisions of the New Mexico Statutes and Constitution notwithstanding. The case was not appealed.

The case of **Montoya v. Bolack**, involves the question of whether Indians living on a reservation in New Mexico can acquire the residence necessary for purposes of being eligible to vote in State elections. The decision of the district court for the second judicial district was to the effect that they can. This decision has been appealed to the Supreme

Court of the State of New Mexico and an opinion by that Court has not yet been handed down.

In view of the above, the proper procedure for you to follow is to accept the registration of such Indian if the other requirements for registration are met. Unless a decision to the contrary is forthcoming from the Supreme Court prior to election day, such properly registered Indians should also be allowed to vote.