

Opinion No. 64-33

March 11, 1964

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

TO: Mrs. Alberta Miller, Secretary of State, Santa Fe, New Mexico

QUESTION

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What are the requirements and qualifications for persons voting in municipal elections?

CONCLUSION

The requirements and qualifications are the same as those for general elections.

OPINION

ANALYSIS

Article VII, Section 1, New Mexico Constitution, provides that:

"Every male (the 19th amendment to the Constitution of the United States in effect expunged the word 'male') citizen of the United States, who is over the age of twenty-one years, and has resided in New Mexico twelve months, in the county ninety days, and in the precinct in which he offers to vote thirty days, next preceding the election, except idiots, insane persons, persons convicted of a felonious or infamous crime unless restored to political rights . . . shall be qualified to vote at all elections for public officers. . . ."

In addition, this Section provides that "the legislature shall have the power to require the registration of the qualified electors as a requisite for voting." This the legislature has done in a number of statutes. Sections 3-2-1, 3-2-5 through 3-2-50, N.M.S.A., 1953 Compilation.

Sec. 14-16-12, N.M.S.A. 1953 Compilation, enacted in 1909, provides that "the qualification of voters at all corporate elections shall be the same as provided by law for voters at general elections in this state, **but no registration shall be necessary or required.** . . ." (Emphasis added).

However, as the compiler of the statutes points out, the underlined portion of the above provision was superseded by Section 3-2-49, N.M.S.A., 1953 Compilation, as amended in 1939, and which provides as follows:

"No person shall vote at any general, special, primary or municipal election unless registered as provided by the laws of the state of New Mexico and unless otherwise qualified as herein provided; and no ballot of any unregistered or unqualified elector or person, shall be cast, counted or canvassed. **The provisions of this section shall be mandatory.** No person shall be registered unless at the next ensuing election he will have the qualifications of an elector as hereinafter provided and **registers as provided by the laws of New Mexico.**" (Emphasis added).

If any further evidence of legislative intent to require registration of voters in municipal elections is needed, it is only necessary to turn to Section 3-2-28, N.M.S.A., 1953 Compilation. This section provides that "for the purpose of municipal elections, the clerk of each incorporated municipality shall obtain from the county clerk the original affidavits of registration for all precincts and election districts in whole or in part within such municipality at least three days prior to any municipal election and such original affidavits of registration as shown on their face that the elector is a resident within the limits of such municipality shall constitute the registration list for such municipal election."

Thus the requirements and qualifications for voting at municipal elections are the same as those for general elections.