Opinion No. 64-52

April 14, 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

QUESTIONS

1. Since Section 3-11-56, a provision prohibiting write-in candidates in primary elections has been repealed, is there still a prohibition against write-in votes in primary elections?

2. Since Section 3-11-68, a provision which allowed the use of voting machines in primary elections has been repealed, can voting machines still be used in primary elections?

3. How many election officials are to be appointed for each voting division?

4. How is the provision contained in Section 3-11-20 requiring county clerks to furnish copies of the registration books to all election officials three days prior to the primary election to be implemented?

CONCLUSIONS

1. Write-in votes are still prohibited in primary elections.

2. Voting machines are still to be used in primary elections.

3. See Analysis.

4. See Analysis.

OPINION

ANALYSIS

Section 3-11-56, N.M.S.A., 1953 Compilation, which was repealed in 1963, provided that "write-in candidates shall not be permitted in the primary for any office whatsoever." However, Section 2 of Chapter 306, Laws 1963, provides as follows:

"You cannot write in the name of any candidate on a primary election ballot."

Thus the law on this particular point remains unchanged.

Section 3-11-68, repealed in 1963, provided that nothing in the election code should be construed to prevent the use of voting machines at primary elections. However, Section 3-4-28 provides in pertinent part as follows:

"Based on the official canvass of the state canvassing board, the county commissioners of each county **shall** provide voting machines for use in general and **primary** elections according to the following schedule . . ." (Emphasis added).

We see then that it is the duty of county commissioners to provide voting machines for use in primary elections, the number of required machines to be based on the total number of ballots cast in the precinct or voting division in the preceding general election.

In your third question you ask how many election officials are to be appointed for each voting division. There are a number of statutory provisions on this matter and not all of them are consistent. See e.g., Sections 3-3-15, 3-3-32, 3-4-25, 3-4-26, N.M.S.A., 1953 Compilation. However, in the case of any irreconcilable conflict, the most recent enactment must prevail and insofar as primary elections are concerned that is Section 3-11-19, N.M.S.A., 1953 Compilation (P.S.).

This Section provides that it shall be the duty of the board of county commissioners in each county to appoint **three election judges** for each voting division and **a polling clerk** for each voting division for each party participating in the primary election (which means two polling clerks). This provision also requires the board of county commissioners to appoint **three counting judges** and **two counting clerks** for each voting division where more than two hundred votes were cast for the office of governor at the last preceding election. Further, an additional polling clerk is to be appointed for each voting division in the county for any political party participating in the primary election when such additional polling clerk has been selected and his appointment requested by any group of six candidates for such party's nomination for county offices in the county.

Your fourth question relates to the requirement in Section 3-11-20, N.M.S.A., 1953 Compilation (P.S.) that county clerks furnish copies of the registration books to all election officials three days prior to primary elections. It would be physically and financially impossible to actually deliver a copy of the registration books to all election officials. In our opinion the county clerks are simply required to make the duplicate registration books available at her office three days prior to the primary election for examination by election officials.