

Opinion No. 64-55

April 28, 1964

BY: OPINION OF EARL E. HARTLEY, Attorney General J. Forshaw Rosenthal,
Assistant Attorney General

TO: Mr. Joe A. Branch, County Clerk, Rio Arriba County, Tierra Amarilla, New Mexico

QUESTION

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In the primary election, can a person of a voter's choice enter the voting booth or voting machine, in addition to the poll clerk(s), when the voter has requested assistance by completing the proper affidavit?

CONCLUSION

Yes.

OPINION

ANALYSIS

Section 3-11-20, N.M.S.A., 1953 Compilation (P.S.) (Primary Elections) provides in part:

"Such primary election shall be held, the voters shall vote therein, the method of voting shall be followed, the votes counted and canvassed, and the returns made in the same manner as by law provided for general elections except as herein otherwise provided or inconsistent with the provisions of this act. . ."

The section in the election code dealing with poll clerks in primary elections is § 3-11-19, N.M.S.A., 1953 Compilation (P.S.) which directs the county commissioners to appoint a poll clerk for each political party participating in the election plus additional clerks of the same party if these additional clerks are requested in writing by county candidates. This statute provides that only the poll clerks of the individual's own party may accompany the voter into the booth, if assistance is requested by the voter.

There is no mention in the primary election section of an additional individual accompanying the voter, or provisions for the voter requesting a person of his choice to accompany him into the booth.

In the general election code, several sections dealt with voter assistance. In Section 3-3-34, N.M.S.A., 1953 Compilation, the duties of the poll or election clerks are stated:

"It shall be the additional duty of the two (2) poll clerks to accompany to an election booth any voter who has requested assistance and executed by signature and mark the necessary affidavit therefore as **prescribed** herein. Both clerks . . . shall accompany such voter to the booth and assist the voter to correctly mark the ballot. . ."

(Emphasis added).

Section 3-3-13, N.M.S.A., 1953 Compilation (P.S.) relating in part to the assistance affidavit, uses similar language.

"When any voter requires assistance . . . such voter shall be required to take the oath in the **form hereinafter provided** and sign or mark the **printed affidavit**. . ."

Section 3-3-20, N.M.S.A., 1953 Compilation (PS) which directs the Secretary of State to prepare election return books for any general, special or primary election, and which requires certain specified instructions to be included, at paragraph 18 states in part:

"No judge, clerk, challenger, party worker, sheriff, deputy sheriff, or other person shall go into any booth while occupied by an elector marking his ballot, except the two (2) poll clerks **and a person selected by the voter**."

The statutory authority for this specific instruction is found in Section 3-3-30, N.M.S.A., 1953 Compilation (PS) titled, "Assistance in marking ballots." This section provides the form required to be signed or marked by the voter requesting assistance in voting. In part "A" assistance is allowed for those unable to effectively vote because of blindness, defective eyesight or any other physical disability. A person of the voter's own selection to accompany him into the booth is specifically provided for. In part "B" which provides assistance for those unable to read English or Spanish it is also specifically provided that one of the voter's choice may accompany the voter and the poll clerks into the voting booth.

Considering the statutory mandate that the provisions of the general election code are to be followed in the primary elections unless a specific inconsistency will result, it is apparent that a voter in the primary election may, by requesting assistance in the manner specified, also request an individual of his choice to accompany himself and the poll clerk, or poll clerks of his own party into the voting booth. It is to be noted that there is an inconsistency in the primary and general election statutes as to the poll clerks of the two major parties accompanying the voter into the booth. In the general election the poll clerks of both parties accompany the voter. In the primary only the poll clerk or clerks of the voter's party may accompany the voter.