

Opinion No. 66-52

April 29, 1966

BY: OPINION OF BOSTON E. WITT, Attorney General Myles E. Flint, Assistant Attorney General

TO: Mr. Don Hancock, Assistant District Attorney, P. O. Box 808, Alamogordo, New Mexico

QUESTION

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May errors contained in affidavits of registration on file and in the registration books of the County Clerk be corrected during the thirty day period immediately preceding the primary election?

CONCLUSION

Yes, see analysis.

OPINION

{*64} ANALYSIS

Section 3-2-19, N.M.S.A., 1953 Compilation (P.S.) provides:

"ACCEPTANCE OF REGISTRATION BY COUNTY CLERK -- REGISTRATION TO BE CLOSED THIRTY DAYS BEFORE ELECTIONS. -- The county clerk shall receive affidavits of registration at all times except that he shall close registration at five (5) o'clock P.M. on the thirtieth day preceding any election at which the registration books are to be furnished to the judges of election and shall reopen such registration on the Monday following such election. During the period when registration is closed, the county clerk may receive affidavits of registration and other documents pertaining thereto but shall not file the same in the registration books until such time as registration is reopened at which time the triplicate affidavit of registration shall be mailed to the registrant at the address shown by his registration affidavit.

Section 3-2-26, N.M.S.A., 1953 Compilation (P.S.) provides:

"CHANGE OF NAME OR CORRECTING ERROR -- APPLICATION -- EXECUTION -- CONTENTS -- REPLACEMENT OF LOST COPY. -- Any registered voter who, subsequent to registration, changes his name or discovers an error in his affidavit, may have the name or any error in the affidavits of registration by executing an application therefor. The application shall show the name by which the voter previously registered,

his change of name or correction of error and a request that the change of name or correction of error be shown on his affidavit of registration. The application shall be subscribed and sworn to by the voter before an officer authorized to take acknowledgments and, when executed as provided in this section, shall be filed with the county clerk and retained by him in a file for that purpose. The application to change the affidavit of registration may be destroyed after six (6) years. The county clerk shall note the change of name or correction of error on {*65} the original and duplicate affidavits of registration on file in his office.

In the event any affidavit of registration should become lost, upon proper petition the district court may direct the clerk to make a duplicate thereof from the duplicate files of the affidavits in his office."

It is quite clear from a reading of Section 3-2-19, supra, that **no registration affidavits** may be filed in the registration books during the thirty day period immediately preceding an election of any kind. While the clerk may accept such registrations made during that period, he or she may not file them in the registration books. The thirty day period set forth in that section deals with the submission for filing of "registration affidavits."

Under the fact situation posed by our question, it is presumed that the "registration affidavit" was filed at a proper time but that it is in some way erroneous. For example, the voter's name has been misspelled or necessary information has been omitted. The statutory section providing for the correction of errors, Section 3-2-26, supra, does not contain a specific time limitation and obviously from the language contained therein applies to affidavits of registration which are already on file.

The actual question here is whether the thirty day period during which new registrations may not be filed applies and therefore prevents the correction of errors during that period. It is our opinion that errors may be corrected during this period. This conclusion is based upon the determination that the thirty day period applies only to filing of registration affidavits.

Policy considerations would also tend to support this conclusion. The right to vote is a constitutionally guaranteed right. It would not be consistent with the policy of that constitutional right, to prevent a person from participating in an election, merely because of some error contained in a registration affidavit. This policy is most clearly stated in **State v. Herrera**, 48 N.M. 45, 145 P. 2d 864 wherein the Court stated:

". . . the voter shall not lightly be deprived of his rights as an elector either by fraud or the mistake of election officers if it is possible to prevent it."

The construction of the two statutory sections cited gives effect to the language of the statutes and the policy considerations found in the **Herrera** case.