

Opinion No. 69-128

November 7, 1969

BY: OPINION OF JAMES A. MALONEY, Attorney General Jeff Bingaman, Assistant Attorney General

TO: Honorable Arthur L. Dow, State Representative, 3718 Candelaria Road N.E., Albuquerque, New Mexico

QUESTIONS

QUESTIONS

1. Is there any legal limit on the number of days a registration officer may keep affidavits of registration and other similar documents presented to him by an elector before turning them over to the County Clerk?
2. Are the County Clerks required to accept registration affidavits during the period in which registration is closed preceding an election?
3. If the answer to the second question is in the affirmative, when should the County Clerks file such affidavit of registration?

CONCLUSIONS

1. Yes.
2. Yes.
3. See Analysis.

OPINION

{*206} ANALYSIS

The answer to the first question is clearly presented in Section 3-4-6, N.M.S.A., 1953 Compilation which reads as follows:

"RECEIPT FOR AFFIDAVIT OF REGISTRATION. -- When the affidavit of registration is to be presented to the county clerk by a registration officer, who is other than the county clerk or his deputy, the affidavit shall be presented within ten days after the date of its execution and a receipt shall be given to the registrant. The receipt shall be in substantially the following form:

(Side 1)

'RECEIPT FOR AFFIDAVIT OF REGISTRATION

___ who resides at ___ in ___ County, New Mexico, has today before the undersigned subscribed, and delivered Affidavit of Registration No. ___ Dated ___ (Signature and title of registration officer.) THIS RECEIPT IS NOT AN AFFIDAVIT OF REGISTRATION

(See reverse side)'

(Side 2)

'NOTICE TO REGISTRANT

If you do not receive your triplicate copy of your affidavit of registration within twenty days of the date shown on the other side of this receipt, please contact your county clerk at the county courthouse."

Clearly, according to this statute the affidavits of registration must be turned over to the county clerk no later than ten (10) days after the date of execution.

The second question presents a slightly more difficult legal question than did the first question. The statutes which we must refer to in answering this second question are Sections 3-4-8A, 3-4-8B and 3-4-8D, N.M.S.A., 1953 Compilation. These subsections of Section 3-4-8, N.M.S.A., 1953 Compilation read as follows:

{*207} "DUTIES OF COUNTY CLERK -- ACCEPTANCE OF REGISTRATION -- CLOSE OF REGISTRATION. --

A. The county clerk shall receive affidavits of registration at all times except that he shall close registration at five o'clock p.m. on the forty second day preceding any election at which the registration books are to be furnished to the precinct board.

B. Registration shall be reopened on the Monday following the election.

D. 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 affidavit in the registration book until the Monday following the election at which time the triplicate affidavit copy shall be mailed to the registrant at the address shown on the affidavit."

The question arises as to what is meant by the term "close registration" as used in Subsection A of Section 3-4-8, supra. It is our opinion that this term means merely closing the registration book and not filing the affidavits of registration.

Next we must determine the meaning of the word "may" as used toward the beginning of Subsection D of Section 3-4-8, supra. Specifically, when it is said that the county clerks "may" receive affidavits of registration, does this mean that the county clerk has the discretion to receive or reject such affidavits? In our opinion, Subsection D is

properly interpreted to mean that the county clerk has no such discretion to reject affidavits of registration.

We are aware that the word "may" is often interpreted as indicating discretion. But, the word "may" is not infrequently used interchangeably with must. **Reese v. Dempsey**, 48 N.M. 417, 152 P.2d 157 (1944). Whether the word is used in a mandatory or discretionary way is a matter of legislative intention to be determined by a consideration of the purpose sought to be accomplished. **Ross v. State Racing Commission**, 64 N.M. 478, 330 P.2d 701 (1958). **State ex rel Sun Company v. Vigil**, 74 N.M. 766, 398 P.2d 987 (1965). We believe it is clear that a reading of the registration provisions as a whole requires the conclusion that may means must.

Our conclusion is dictated by the language of 3-4-6 which was quoted at the beginning of this opinion. By requiring that affidavits of registration be presented to the county clerk within a specific period of time from their execution, that statute also impliedly requires that the county clerks accept such affidavits of registration when presented. The fact that the registrant presents himself in person to the county clerk and signs the affidavit would not change the result. It would be ludicrous to assume that the law would require the clerk to accept the affidavit from the registration officer but not from the voter. As pointed out in Subsections A and B of Section 3-4-8, *supra*, this requirement that the county clerks accept the affidavits is not a requirement that the affidavits be filed at that time.

In answer to the third question presented, Subsection B of Section 3-4-8 specifically provides that affidavits of registration should be filed by the county clerks on the Monday following the election if such applications are received during the period when the registration books have been closed.