

## Opinion No. 72-37

August 28, 1972

**BY:** OPINION OF DAVID L. NORVELL, Attorney General Prentis Reid Griffith, Jr.,  
Assistant Attorney General

**TO:** Honorable Betty Fiorina, Secretary of State, Legislative Executive Building, Santa Fe, New Mexico 87501

### QUESTIONS

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1. May a county use paper ballots for school bond elections which are scheduled on August 29th and September 27th, 1972, if in the opinion of the county clerk and the county commissioners there will not be enough time before the 1972 general election of November 6, 1972 for preparation of voting machines if these machines are used in the school bond elections?
2. May the county provide for the use of poll books instead of signature rosters in these school bond elections?

#### CONCLUSIONS

1. Yes.
2. Yes.

### OPINION

#### {\*63} ANALYSIS

In answer to your first question, school bond elections are not to be governed by the provisions of the Election Code. See Section 3-1-19, NMSA, 1953 Comp. School bond elections, Sections 77-15-1 through 77-15-12, NMSA, 1953 Comp. (1971 P.S.) are to be conducted pursuant to Sections 77-5-1 through 77-5-20, NMSA, 1953 Comp. (1971 P.S.), and the Bond Election Act, Sections 11-6-35 to 11-6-40, NMSA, 1953 Comp. (1971 P.S.). See Section 77-15-40, NMSA, 1953 Comp. (1971 P.S.).

Section 77-5-9(E), **supra** (P.S.), provides as follows:

"E. Voting machines shall be used {\*64} in lieu of paper ballots for the recording of votes cast in a school district election"

Section 11-6-38, **supra**, of the "Bond Election Act," provides as follows:

"11-6-38. Bond elections. -- A. Each proposition to issue bonds shall be submitted by a single set of ballots to all voters of the municipality, school district, county, junior college district or branch community college district, but the Bond Election Act [11-6-35 to 11-6-40] does not prevent the submission of more than one [1] proposition on the same ballot.

B. The ballots shall be deposited in **one [1] ballot box for each polling place at any bond election** and the vote shall be cast, counted, returned and canvassed so that the board can determine the total number of votes cast at each election for and against each bond proposition.

C. The Bond Election Act **does not prevent any board from using one [1] or more voting machines at any polling place for any bond election if the vote is cast, counted, returned and canvassed and the election otherwise is conducted in a manner which is consistent with the Bond Election Act.**

D. Except as expressly provided in the Bond Election Act, any bond election shall be called, conducted and canvassed pursuant to applicable statutes governing elections for the bonds.

E. Any bond proposition submitted under the Bond Election Act is approved and bonds may be issued if a majority of the voters voting on the proposition to issue bonds is in favor of the proposition." (Emphasis added)

Thus it can readily be seen that the two acts governing the conduct of school bond elections appear to be in conflict on the question whether voting machines **must** be used in such elections.

However, not only is the Bond Election Act more specific on the question of school bond elections, it contains Section 11-6-39, which provides as follows:

"11-6-39. Scope of act. -- The Bond Election Act [11-6-35 to 11-6-40] is cumulative to all other laws on the subject, except that, when any bonds are being voted pursuant to the Bond Election Act, provisions of the Bond Election Act control to the extent of any conflict or inconsistency between its provisions and any provisions of any other law."

Therefore, we must conclude that the use of voting machines in a school bond election is permissive and not mandatory. See also Section 77-15-5(C), NMSA, 1953 Comp.

Your second question, we understand, was created by concern on the part of the county, which is implementing the Optional Registration Act, Sections 3-5-1 through 3-5-35, NMSA, 1953 Comp., that such Optional Registration would not be implemented in time for the two school bond elections. We refer you to Section 77-5-10(C), NMSA, 1953 Comp. (1971 P.S.), which provides:

"C. In any county in which the Optional Registration Act [3-5-1 to 3-5-25] has been implemented, the superintendent of schools shall obtain from the county clerk the registered voter list and signature roster for all precincts. . . ."

In our opinion this section should be interpreted to mean that signature rosters **must** be used **only** when the Optional Registration Act, **supra**, has been fully implemented. In the situation you posed, poll books may be used in either or both of the school bond elections if optional registration is not fully implemented at the time the elections are held.