Opinion No. 14-1153

January 20, 1914

BY: H. S. CLANCY, Assistant Attorney General

TO: W. D. Tipton, Esq., Mayor, Columbus, New Mexico.

QUALIFICATION OF ELECTORS.

Qualification of electors under Chapter 75, Laws of 1913.

OPINION

*{*6}* I have your letter of the 19th inst., making a number of inquiries as to the conduct of an election to be held in the village of Columbus under the provisions of Chapter 75 of the Session Laws of 1913.

I am enclosing to you herewith three opinions of this office bearing upon the subject about which you inquire, which answers several of your questions; other questions propounded by you but which are not specifically answered in the opinions above referred to, are:

1. Has any one who is a homesteader that lives in this precinct that applies for leave of absence for five months and moves into the incorporation limits thirty days prior to the election, a legal right to vote?

In reply I have to say that the fact that the United States government has granted a homesteader a leave of absence, clearly indicates that such leave of absence is from his home or place of residence, and that such a person would not be entitled to vote at a municipal election.

2. Has a man who has made application to commute and not having received his receipt a right to vote?

Answering this question, I have to say that such a person is not disqualified from voting, provided he is qualified by residence for the time prescribed by the Constitution.

3. We have two men who came in here on January 6, late in the afternoon. Our election day is February 5th. Have they a right to vote under the thirty day limit?

Replying to this question, I have to say that if these men are otherwise qualified as to residence it would appear that they will have lived in Columbus on February 5th, for the period of thirty days.

4. What powers have the judges of the election to accept or reject votes if they are in doubt of the veracity of the voter?

In response to this inquiry, I cannot do better than refer you to the case of Territory, ex rel. Lester, vs. Suddith et al., 15 N.M. 736, where our Supreme Court makes use of the following language:

*{*7}* Our Territorial statutes give election judges no discretion in the matter of counting or declaring ballots once received. There is a discretion, it is true, at the moment a ballot is tendered. Comp. Laws, Secs. 1665, 1668 and 2443, expressly declare the right of judges of election to reject ballots when tendered. Thus Sec. 1665 is as follows: "When any person offers to vote, whose qualifications, as required by this law, are not personally known to any of the judges, he may be examined under oath as to said qualifications, and those who take a false oath shall suffer the penalty prescribed by law for perjury."

Sec. 2443 contains the following proviso to the municipal laws: "Provided, That nothing in this act shall be so construed as to prevent any or all persons so registered from being challenged at the polls as to their right to vote, or to prevent the judges of election from rejecting the vote of any person so registered, for cause, at the polls."

But even in these cases it is provided by Section 1668 that a record must be made showing the persons for whom the vote is tendered. That section reads as follows: "When any person offers to vote and is rejected, his name shall be registered in the poll book, and all the names of the persons he offers to vote for, and the word, rejected, shall be written opposite the name of the person offering to vote."

But this discretion exists only when the ballot is tendered. Once received, the duty of the judges becomes ministerial and threefold, to count, to declare by return and deliver the ballots to the city clerk. Whether a vote once received is in proper form and may legally be counted is a matter for a tribunal other than the election judges.

I believe that the foregoing gives you all the information desired.