

## Opinion No. 35-850

January 9, 1935

**BY:** FRANK H. PATTON, Attorney General

**TO:** Honorable John E. Miles, Democratic State Chairman, Santa Fe, New Mexico.

{\*31} Due to the possibility of contest proceedings which may or may not materialize in certain counties in this state, it is deemed necessary to call your attention to Section 41-355 of the 1929 Compilation.

This provision reads as follows:

"41-355. Ballots -- Destruction of.

After the expiration of seventy-five days following the adjournment of the state canvassing board, each county clerk shall, in the presence of the district judge for the county, open all ballot boxes of the precincts and election districts in his county, concerning which said clerk has received no legal notice of a contest or judicial inquiry, and take therefrom and burn the contents thereof; and as to the contents of ballot boxes involved in any contests or judicial inquiry wherein a recount or inspection of the contents of such ballot boxes is sought or may appear to be necessary, the county clerk shall hold said ballot boxes and their contents intact subject to the order of the district court or other authority having jurisdiction of such contest, until the final determination of such contest, judicial inquiry or a final appeal therefrom."

{\*32} As will be noted from the above provision of law, after the expiration of seventy-five days from the date of adjournment of the State Canvassing Board, county clerks shall, in the presence of the district judge of the county, open ballot boxes and burn the ballots. This is in the absence of receipt by the said clerk of a legal notice of contest or judicial inquiry.

Where ballot boxes are involved in any contest or in any judicial inquiry wherein a recount or an inspection of the contents of the ballot boxes is sought, or appears to be necessary, the county clerk shall hold said ballot boxes and their contents intact, subject to the authority of the district court, until final determination of such contest, judicial inquiry, or final appeal therefrom.

It is, therefore, my suggestion that where contests have been instituted, or where same shall be instituted before the seventy-five days expires, that a notice of such contest or judicial inquiry be served upon the county clerk of the county involved in order that such ballot boxes and their contents may be preserved and held intact to await the orders of the court.

It is my further suggestion that this letter be mimeographed by your office and a copy forwarded to the county clerks of such counties which at this time, or who may become affected by such contest proceedings or judicial inquiry.