

**Opinion No. 36-1372**

May 27, 1936

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

**TO:** Mr. David W. Carmody, Assist. District Attorney, Santa Fe, New Mexico.

{\*119} Under date of May 22nd, 1936, you have asked for our opinion regarding the constitutionality of the absentee ballot law of 1927. Mr. Patton, in a previous opinion, held that in view of the decision of the Supreme Court in Thompson vs. Scheier, No. 4135, the 1927 absentee ballot law is now in full force and effect. He stated, however, in his opinion that if the 1927 law was involved it would probably also be held unconstitutional.

After reading the opinion of the Supreme Court in the case of Thompson vs. Scheier, it seems to me that the vice in the 1933 law, which is pointed out by the Supreme Court, namely, that it permits a voter to vote outside of his precinct, also exists in the 1927 law. Of course, the 1933 law had other provisions which fail to meet the constitutional test, but I think it is clear from the court's opinion that under our present constitution no absentee ballot law can be validly enacted since whatever law might be passed by the legislature would naturally provide for votes being cast outside of the precinct or by someone within the precinct other than the person offering to vote. Consequently, it is my opinion that the 1927 absentee ballot law is also unconstitutional.

By QUINCY D. ADAMS,

Asst. Atty. General