

## Opinion No. 42-3990

January 16, 1942

**BY:** EDWARD P. CHASE, Attorney General

**TO:** Mr. James C. Enloe Assistant District Attorney Socorro, New Mexico

{\*144} In your letter dated January 14, 1942, you request an opinion concerning the Registration Law, and have asked five questions which I shall answer in the same order in which they are presented.

"1. May the County Clerk refuse to allow a transfer in registration of a voter who is not a resident of the municipality, to the knowledge of the Clerk, when this voter seeks to transfer his registration from an outside district to the municipality just prior to a municipal election?"

In Section 2, Chapter 142, Laws of 1941, provision is made for change of registration from one precinct to another within the county in which a person is registered. This section provides that upon receipt of such application for a change in registration, the county clerk shall make the necessary changes required in his records in order to effect the change in registration. In my opinion, the clerk may not refuse to allow a transfer in registration from one precinct to another provided the application therefor is in the proper form.

"2. May the County Clerk refuse to allow a person to register to vote when he personally knows that that person will not be a bona fide resident for the purpose of voting by the time a given municipal election takes place? But in the event that the County Clerk knows that this person will be a bona fide resident for the purpose of voting by the time the next general election takes place, may he refuse to register such person until he qualifies to vote in said general election?"

This question has already been answered in the affirmative by this office in Opinion No. 3817, a copy of which I am enclosing herewith for your information. This conclusion is substantiated by Section 28, Chapter 152, Laws of 1939, providing for purging the registration list and adding names of such list of persons whose registration has been refused.

"3. Assuming that the duplicate registration slips are missing from the master file of the County Clerk and the certificates are known by the County Clerk to belong to persons who never existed or have gone from the state or nation since their original registration, must he take any steps as provided by law to place in lieu duplicates in the master file for such persons?"

Section 23, Chapter 152, Laws of 1939, provides in part as follows:

"The county clerk shall, at least ten days before any general, special or primary election, make a complete check and comparison between the duplicate registration affidavits and the original registration affidavits and shall, if any original or duplicate affidavits be lost or missing, certify such fact to the District Judge for the county wherein such condition exists, who shall forth-with direct the county clerk to issue certificates in lieu of those which are lost or missing and order that they be inserted in the proper file, which order shall be complied with by the clerk before the record affected is sent to the precinct or voting district officials."

{\*145} In view of this language, the clerk should either obtain an order to substitute certificates in lieu of those which are missing or else by presenting the facts to the judge in his petition, he should obtain an order directing the cancellation of registration certificates of fictitious persons or persons whom he knows are no longer qualified electors.

"4. Where the duplicates of the registration certificates of the wives or persons, the latter of whom are known by the County Clerk never to have been married, are missing from the master file of the County Clerk, must the latter take steps as provided by law for the placing of in lieu certificates in the master file for such persons?"

The same procedure should be followed as outlined for question number 3. Either a duplicate certificate should be prepared under authority of a court order, or else an order should be obtained canceling the registration.

"5. Where the duplicate of the registration certificate is listed in the master file as being in one precinct and the original is listed as being in another precinct in the precinct book, what shall the County Clerk do to straighten out this difficulty?"

An error of the sort mentioned above should be corrected by obtaining a court order canceling the registration certificate which shows the incorrect precinct number, and substituting a certificate in lieu of the erroneous certificate which was canceled, also under authority of the court order.

I suggest that the registration officials, including the county clerk, refuse to allow registrations only with the greatest of discretion, in view of the provisions of Sections 41 and 42, Chapter 152, Laws of 1939, which provide severe penalties for fraudulent registration by the elector, or for the wilful failure or refusal of the registration officer to perform his duty as required under the Registration Law.

By C. C. McCULLOH,

Asst. Atty. General