

## Opinion No. 42-3999

January 23, 1942

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

**TO:** Mr. Claron E. Waggoner District Attorney Socorro, New Mexico

{\*148} In your letter dated January 21, 1942 you enclose a letter from G. L. Benavides, County Clerk of Socorro County, making several inquiries relative to the election laws, and you request an opinion relative to the same.

Your first question is whether, in changing registration from one precinct to another, it is necessary that the change be made more than thirty days prior to any election coming within the registration laws, and, also, in changing registration from one county to another, whether the change must be made more than ninety days prior to any election in which registration is required.

{\*149} Section 1, Chapter 153, Laws of 1939, defines the words "qualified elector", "elector" or "voter" as meaning, "any citizen of the United States who at the date of the election will be over the age of twenty-one years and will have resided in the state twelve months, in the county ninety days and in the precinct in which he offers to vote thirty days, next preceding the election, \* \* \*". It is apparent from this language that it is the length of time in actual residence in the changed precinct or county which qualifies the electors to vote rather than the date of change of the registration certificates.

Section 2, Chapter 142, Laws of 1941, provides for transfer of registration from one precinct or voting district to another, and Section 14, Chapter 152, Laws of 1939, provides for transfer of registration from one county to another. Both of these sections provide that when an elector changes his place of residence from one precinct to another or from one county to another, he may make on application to transfer his registration at any time within the period of registration. It should be kept in mind that the registration records are required to be closed thirty days prior to any general election, special election, primary election, and municipal election, insofar as voters in the municipal election are concerned.

Your next question is whether, under Section 1, Chapter 91, Laws of 1941, judges of election may challenge any vote or whether they must count all votes cast.

The pertinent portion of this law is as follows:

"\* \* \* and no judge of election or counting judge shall refuse to count the ballot of such elector for the reason that he is not a resident of such precinct or election district.

"If the ballot of any registered elector be challenged for the reason that such elector is not a resident of such precinct or election district, such ballot shall be placed in a

separate envelope, for that purpose, with the proper notation thereon, but said ballot shall be counted."

It is apparent from this language that the ballot which is challenged because of **non-residence** in the precinct or voting district shall be counted, regardless of the challenge, and regardless of the fact that the same is to be placed in a separate envelope. However, a challenge for other reasons, such as being under twenty-one years of age or having been convicted of a felony, etc., may be made, and in such event, such ballot is not required to be counted under the provisions of Chapter 91, Laws of 1941, but should be handled in the manner as heretofore authorized by law regarding challenged ballots.

You also ask for some advice relative to elections for school board members. As you know, no registration is required in the case of school elections. Section 1, Chapter 151, Laws of 1939, defines the word "election" to mean and apply to all primary elections, general elections, special elections, and municipal elections. Chapter 85, Laws of 1937, covering rural school elections, does not require registration of voters, but only requires that the voters be legal voters residing in said district. Chapter 2, Laws of 1941, covering elections in municipal school districts, specifically states that no registration shall be required.

If you anticipate any difficulties in the school board elections to be held in February, insofar as the form of ballots, etc., may be concerned, I suggest that you discuss the matter with the county school superintendent, and have her send out uniform instructions regarding the form of ballots, in order that all candidates may be placed upon one ballot in order to preserve the secrecy of the ballot, although Chapter 85, Laws of {\*150} 1937, does not cover the form of ballot, but merely says that votes shall be by written or printed ballots.

Trusting that the foregoing sufficiently answers your inquiries, I am

By C. C. McCULLOH

Asst. Atty. General