

Opinion No. 44-4436

January 10, 1944

BY: EDWARD P. CHASE, Attorney General

TO: Honorable John J. Dempsey, Governor of New Mexico, Santa Fe, New Mexico

This will acknowledge receipt of your letter dated January 7, 1944, stating:

"During recent weeks there has been a great desire on the part of several states to make it possible for men in service to vote in the coming elections. * * *"

and requesting that I advise you whether or not, under our laws, there are any steps that may be legally taken to permit our men in the service to vote in our general election.

We have gone into this question in great detail, and have, we believe, considered at length every conceivable possibility by which our soldiers may legally be given a ballot under our Constitution to vote in state elections. Strongly sensing the great injustice of drafting thousands of our qualified voters into the armed services, and **apparently** being legally without an absentee ballot law giving them the right to select their representatives to carry on our State, as well as our Federal Government during their absence; I do strongly feel that every effort should be made to grant our men and women in the armed services the privilege of voting by absentee ballot.

After an exhaustive research, it has become clear to me that there remains only one possibility of obtaining a valid absentee voting law by the next general election, same being to institute legal proceedings with the object and for the purpose of giving our Supreme Court the opportunity of reversing its decisions in Thompson v. Scheier, 40 N.M. 199, 57 P. 2d 293, and Baca v. Ortiz, 40 N.M. 435, 61 P. 2d 320.

In view of the above, I recommend that you request me to immediately institute an action whereby this question may be reviewed by our Supreme Court, at which time we can submit contentions and cases not previously considered which, in our opinion, merit attention, and if the Court should reverse its previous holding, you would then be in a position to call a special session of the Legislature and recommend the passage of an act meeting all legal and military requirements.