

Opinion No. 44-4582

September 21, 1944

BY: C. C. McCULLOH, Attorney General

TO: Mrs. Cecilia Tafoya Cleveland, Secretary of State, Santa Fe, New Mexico

We have your letter of September 18, 1944, wherein you request an official opinion of this office concerning the duties of the county clerk and the Secretary of State upon receipt of an application for an absentee ballot, or upon receipt of a federal war ballot wherein it is not apparent what precinct the person wishing to vote is a qualified elector of.

Section 4 of an Act Relating to Absentee Voting by Members of the Armed Forces of the United States, passed by the Special Session of the 16th Legislature of the State of New Mexico, provides in part:

"The Secretary of State, upon receipt of post cards or letters prepared pursuant to Section 3, shall from time to time prepare for and cause to be transmitted to each county clerk a statement containing the names and addresses of and such other information appearing on the post card or letter as may be appropriate with respect to the individuals making such request who are requesting a ballot to vote in any precinct in such county. * * * **From such information, together with such other information as the county clerk may have or obtain**, it shall be the duty of the county clerk to determine the precinct that the various persons are offering to vote in. * * *"

Section 16 of the Act provides for the transmission of ballots cast under this Act or the Federal Absentee Voting statute to the county clerks and further provides for their transmittal to the proper precinct election officials.

At the time of preparing this Act, it was anticipated that many persons in the armed services would not know the number or name of the precinct that they were qualified electors of and, therefore, the Act was prepared under the assumption that the question you present would arise. It was therefore made the duty under Section 4 that the various county clerks, from what information they **could obtain**, determine the precinct that the various persons are offering to vote in and also under Section 16 to deliver ballots received under either the state or federal Act to the proper election officials. The county clerks are to determine the proper precinct by any sources of information at their disposal.

To determine the proper precinct the various persons are offering to vote in, the county clerk may determine from members of the public or members of the family of the person offering to vote what precinct he is actually a qualified elector in. County clerks may, of course, prepare lists to be posted in the Court House or other conspicuous places in the county of all persons who have offered to vote in the county that the county clerk has

been unable to determine the proper precinct of their residence in order that friends of such persons may volunteer information regarding their residence and by this means the various county clerks will doubtlessly be able to determine the proper precincts of many applicants.

Also, if it should be considered feasible by particular county clerks and the Secretary of State, lists of names may be published in some newspaper or newspapers and paid for out of the appropriation provided by the legislature for administering the act, in order that the public or members of the various applicants' families will have an opportunity to advise the county clerk of the proper precinct.

If, after making every reasonable effort, the county clerk is unable to determine wherein certain applicants are qualified electors, it will, of course, be impossible for the county clerks to deliver the ballots cast by such persons to the proper election officials, and it would, therefore, be their duty to retain said ballots and to treat them in the same manner as is required under Subsection B of Section 16.

You ask a further question concerning the disposition of federal ballots which have been received under the provisions of the Act, wherein there might not be applications on file concerning such persons who are offering to vote by the Federal Absentee Ballot under authorization of Section 10 of the Act. These ballots must be sent to the proper county clerks of the county wherein it appears from the outer envelope that such persons are attempting to vote, by the Secretary of State, and the county clerks, from such information, must determine as hereinbefore held, if possible, the proper precinct wherein such persons are offering and are qualified to vote, and proceed according to the provisions of the Act.

Hoping that the above fully answers your questions, I am

By HARRY L. BIGBEE,

Asst. Atty. General