

Opinion No. 44-4605

October 27, 1944

BY: C. C. McCULLOH, Attorney General

TO: Mr. G. T. Watts, District Attorney, Roswell, New Mexico

I have a letter of October 24, 1944 from Mr. John C. Peck, County Clerk in Roswell, by his deputy, Dorothy Herring, wherein an opinion is requested concerning whether or not a war ballot of a returned soldier who has been discharged from the service may be destroyed so that he may vote at the polls for state and county officials. It is further stated that such discharge is registered in Chaves County.

Section 20, Subsection (b) of Chapter I, Special Session, 16th Legislature provides:

"No official war ballot shall be valid if

(1) The voter has also voted in person * * *."

In view of this provision, it is my opinion that if a discharged soldier could furnish an affidavit to the county clerk stating that he intends to vote in person at the polls on election day, and in such affidavit authorizes the county clerk to fail to have delivered to the proper precinct officials the absentee ballot previously marked by such person, the county clerk could mark on the envelope containing such ballot "Withdrawn by request of voter as evidenced by affidavit on file." The county clerk could then retain such ballot in the files with other ballots retained under the provisions of Section 16, Subsection (b). The filing of the affidavit by the voter would be substantial evidence that the absentee ballot under the provisions of the Act would not be valid on election day and therefore the county clerk could withhold the ballot as above provided in order to avoid any possibility of a ballot known to be void being counted by the election officials.

By HARRY L. BIGBEE,

Asst. Atty. General