

Opinion No. 46-4856

February 15, 1946

BY: C. C. McCULLOH, Attorney General

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

{*189} We are in receipt of your request as to the extent Chapter 78 of the Laws of 1945 supersedes Sections 56-401, etc., relating to Constitutional Amendments.

Chapter 78 is as follows:

"At all General Elections at which any proposed 'Constitutional Amendment or Question,' other than the election of officers, shall be submitted to a vote of the electorate, the ballots on the proposed Constitutional Amendment, or amendments, or other question, or questions submitted, shall be printed on the ballot for the election of officers in a column at the right of the last column of names of candidates."

Under this section, when a Constitutional Amendment or other question is to be submitted to the electorate at a General Election, the ballot on the proposed Constitutional Amendment, or other question, shall be printed on the ballot for the election of officers. Since the ballots for the election of officers at General Elections vary from County to County, they must be and are prepared by the various County Clerks. As the ballot for the Constitutional Amendment will go on the general ballot, of necessity the entire ballot must be provided by the various County Clerks.

It is fundamental that where two statutes are in conflict, the later enactment prevails.

Turning now to the various sections of Chapter 56, Article 4 of the N.M. 1941 Compilation, it is observed that Section 56-401 does not conflict with Chapter 78, as it merely provides that elections at which Constitutional Amendments are proposed shall be conducted in conformity with the General Election Code.

Section 56-402 does not conflict with Chapter 78, as it merely provides for the appointment of counting clerks, etc.

Section 56-403 requires the Secretary of State to provide printed ballots, where Constitutional Amendments or other questions are to be submitted to the electors, which ballots are to be transmitted by the Secretary of State to the various County Clerks. It is obvious that when a Constitutional Amendment is to be submitted at a General Election, this provision conflicts with Chapter 78. Thus, the Secretary of State cannot comply with its terms. Of necessity, the County Clerks must print this ballot upon the General Election ballot.

Section 56-404 provides merely that the Secretary of State shall certify to the County Clerks and Board of County Commissioners all proposed Constitutional Amendments or other questions. This does not conflict with Chapter 78, and so the Secretary of State must comply with the same.

Section 56-405 provides for the form of ballot. There is no conflict between this section and Chapter 78, and so the same must be complied with, but by the County Clerks, rather than the Secretary of State, when the same is submitted at a General Election.

Section 56-406 provides for the submission of questions to other than the electors of the entire state. It imposes no duty upon the Secretary of State, but rather on the County Clerks, and so is not in conflict with Chapter 78.

Section 56-407 provides for separate ballots when more than one Constitutional Amendment, or other question is submitted at the same election. If such questions are submitted {**190*} at a General Election, of necessity, Chapter 78 supersedes it, as Chapter 78 provides that all Constitutional Amendments and other questions be printed on the General Election ballot.

Section 56-408 requires the Secretary of State to furnish sample ballots of the Constitutional Amendment, or other question, to be in the same form as the official ballot. This section cannot be complied with when such questions are propounded at a General Election, as the Secretary of State prepares no official ballot.

Section 56-409 provides for the payment of expenses incurred by the Secretary of State in printing and distributing ballots on Constitutional Amendments. This section is not necessarily superseded by Chapter 78. Insofar as the Secretary of State incurs expenses, i. e., the certification of the question, their payment would be authorized.

What has been said above applies only to Constitutional Amendments submitted at a General Election. The above mentioned sections would remain in full force and effect if the Constitutional Amendment or other question were submitted at a Special Election.

By ROBERT W. WARD,

Asst. Atty. General