

Opinion No. 46-4959

October 18, 1946

BY: C. C. McCULLOH, Attorney General

TO: Richard F. Rowley Assistant District Attorney Clovis, New Mexico

{*279} We are in receipt of your letter of October 15, 1946, in which you ask the following question: Assuming that a voter voted a straight ticket by putting an "X" in the circle at the heading of the ballot, and then made his "X" in the square behind one of the candidates for Congress on the opposite ticket, how would the counting judges tally the vote for the four candidates for Congress;

Your attention is directed to Section 56-313 of the 1941 Compilation which provides, in part:

"When two (2) or more candidates are nominated by a political party in a group, as two (2) or more representatives from a legislative district, their names shall be printed on the ballot in the order in which they appear in the certificate of nomination filed with the county clerk.

"If the voter desires to vote other than a straight party ticket for such group of candidates, he shall mark a cross in the square immediately to the right of the name of each candidate for such office for whom he desires to vote, and his ballot shall be considered cast for only the candidates he has so designated, even if he has marked a cross in the circle at the head of either party ticket."

In view of this section, it is my opinion that the counting judges would count one vote for the candidate opposite whose name the "X" was placed, and would not count any vote for any other three candidates. Even without a statute, this would be the necessary result. For instance, if a voter marked an "X" in the circle under the Democratic emblem, and then placed an "X" opposite the name of Douglas, one of the Republican candidates for Congress, it would be impossible to determine whether the remaining vote was intended for Fernandez or Lusk, the two Democratic candidates for Congress, since all candidates for Congress run at large.

By ROBERT W. WARD,

Asst. Atty. General