

## Opinion No. 50-5290

March 24, 1950

**BY:** JOE L. MARTINEZ, Attorney General

**TO:** Mr. Claron E. Waggoner District Attorney Socorro, New Mexico

{\*140} Receipt is acknowledged of your letter dated March 15, 1950, requesting an opinion from this office as to whether or not a third independent ticket is entitled to challengers, judges and watchers of the election or to any other election officials in the polls on election day.

Section 14-1303 of the New Mexico 1941 Compilation provides as follows:

"And all elections for municipal officers shall in all respects be held and conducted in the manner prescribed by law in cases of county elections."

Pertinent part of Section 56-315 of the 1941 Compilation as to judges and counting judges of election provides:

"It shall be the duty of the board of county commissioners, on the third Monday next preceding any election, to appoint three (3) judges of election for each precinct and election district of the county and three (3) counting judges for each precinct or election district in which more than 200 votes were cast for governor at the last preceding election, and said board at least ten (10) days prior to the date of the meeting of said board for that purpose shall cause the county clerk to give written notice to the county chairman of each of the dominant political parties of the day when said board will meet for such purpose. Such county chairman shall each have the right to file with the county clerk before the date of said meeting a list of the names of eight (8) qualified electors in each precinct and election district, who, in addition to being registered, shall have the ability to perform the duties required by law of judges of election and counting judges, and each such chairman shall indicate his preference for order of appointment for judges of election by placing the numbers 1, 2, 3, and 4, opposite the names respectively for the persons he desires to have named as judges of election, and by placing the numbers 1, 2, 3, and 4, opposite the names respectively of the persons he desires to have named as counting judges. The board of county commissioners shall appoint the judges of election and counting judges from said lists, and shall, in making such appointments give preference to such names in accordance with the numbers so placed opposite as aforesaid; and the board shall also in the same manner and from said lists appoint alternates to serve as judges of election and counting judges, respectively. In case of vacancies, not more than two (2) such judges of election and not more than two (2) of such counting judges and not more than two (2) of such alternates for election judges and counting officers respectively, shall belong to the same political party. The board of county {\*141} commissioners shall designate the judge of election who shall receive the election supplies. "If the chairman of either of the

dominant political parties shall fail or refuse to submit such lists for any precinct or election district, the board of county commissioners shall appoint such judge or judges of election and alternate or alternates, and such counting judge or judges and alternate or alternates from the same political party as such chairman failing to file such lists; the person so appointed must have the ability to perform the duties required by law of the judges of election and counting judges."

It is my interpretation of this statute that provision is made only for three judges, not more than two belonging to one or the other two dominant political parties, which are the Democratic and Republican parties. Therefore, it is my opinion that an independent ticket in a municipal election is not entitled to an extra judge or an extra counting judge.

Section 56-331 of the 1941 New Mexico Compilation and Section 56-332 of the 1941 New Mexico Compilation read as follows:

"It shall be the duty of the board of county commissioners on the third Monday next preceding the election to appoint two (2) poll clerks and two (2) alternates for each precinct and election district in the county, and two (2) counting clerks and two (2) alternates for each precinct or election district in which more than two hundred (200) votes were cast for governor at the last election, and at least ten (10) days prior to the date of the meeting of said board for that purpose said board shall cause the county clerk to give written notice to the county chairman of each of the dominant political parties of the day when said board will meet for such purposes.

"Such county chairmen shall each have the right to file with the county clerk before the date for said meeting a list of names of three (3) qualified electors in each precinct and election district, who in addition to being registered shall be qualified to assist voters to correctly mark their ballots and each chairman shall indicate his preference for order of appointment by placing the figures 1, 2 and 3 opposite said names respectively. The board of county commissioners shall appoint one (1) poll clerk and one (1) alternate from the names on each of said lists, and in making such appointments shall select the persons in the order of their designation on said list. One (1) of such poll clerks and one (1) alternate shall be of each of said dominant political parties.

"Such county chairmen shall each have the right also to file with the county clerk before the date for said meeting a list of names of three (3) qualified electors in each-precinct and election district, where counting clerks are to be appointed, who in addition to being registered shall be qualified to tally and keep the record of the votes counted, and each chairman shall indicate his preference for order of appointment by placing the figures 1, 2 and 3 opposite said names respectively. The board of county commissioners shall appoint one (1) counting clerk and one (1) alternate from the names on each of said lists, and in making such appointments shall select the persons in the order of their designation on said lists. One (1) of such counting clerks and one (1) {<sup>\*142</sup>} alternate shall be of each of said dominant political parties.

"If the chairman of either dominant political party shall fail to furnish such list said board shall appoint one (1) poll clerk and one (1) alternate for each precinct, and election district, and one (1) counting clerk and one (1) alternate in districts or precincts entitled to counting clerks, from the same political party as such chairman, who shall be qualified electors of the precinct or election district and qualified to give proper assistance to voters in marking their ballots."

"If any person appointed as such poll clerk or counting clerk shall fail to attend at the polling place, the alternate appointed from the same political party shall take the oath and act as such clerk. In case of vacancy not filled by an alternate, the judges of election for the precinct or election district who belong to the same party as the clerk whose failure to attend caused such vacancy shall appoint some qualified person to fill such vacancy, who shall be of the same political party as the clerk whose failure to attend caused such vacancy."

It is my interpretation of the above two statutes that no provision is made for poll clerk or counting clerks of a third ticket. Provision is only made for the two dominant political parties, namely Democratic and Republican. Therefore a third independent ticket in a municipal election would not be entitled to a poll clerk or counting clerk.

As to election watchers for municipal elections the situation is different. Section 56-342 of the 1941 New Mexico Pocket Supplement specifically provides that in elections for municipal officers, any group of two or more candidates may appoint, in a petition to be filed with the clerk of such municipality, two persons in each voting precinct, who shall have the powers of watchers as aforesaid, at such municipal election.

Under this statute a third ticket in a municipal election would be entitled to have watchers if they follow the procedure herein provided for their selection.

As to election challengers for municipal elections Section 56-314 of the 1941 New Mexico Compilation reads as follows:

"This statute specifically authorizes any county chairman of any political party whose ticket is printed in the official ballot to name a challenger and/or an alternate challenger."

Therefore, under this statute a third ticket filed in a municipal election is entitled to a challenger and/or an alternate challenger.

Trusting that this fully answers your inquiries, I remain