

## Opinion No. 52-5602

October 9, 1952

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

**TO:** Mr. Patrick F. Hanagan Assistant District Attorney Roswell, New Mexico

{\*313} This is in reply to your letter of September 15th in which you request an opinion as to what is the procedure to be followed in the matter of selection of election judges and counting judges and clerks for the coming election.

You state that the situation in Chaves County is that at the last general election the county went Republican for some officers but the County Commissioners are all Democrats and that now that a question of the selection of election judges and counting judges and {\*314} clerks is up, there is some question as to the power and discretion of the County Commissioners in appointing said election and counting judges and clerks.

The pertinent part of Section 56-315 NMSA, 1941 Compilation reads as follows:

"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."

From the regulation herein above quoted, the matter of determining whether the Democrats shall have two judges and two clerks and the Republicans only one judge and one clerk is a matter of discretion with the County Commissioners as long as not more than two judges nor more than two clerks belong to the same political party. If the Democratic County Commissioners are in the majority and they want to select two Democratic judges either election and counting judges, and want to appoint only one Republican election judge and one counting judge, they have the discretion to do it.

It is therefore my opinion that the matter of determining how many election judges and counting judges and clerks each dominant political party gets in the coming general election is a matter to be determined by the majority of the County Commissioners who have the discretion to make that determination.

Trusting that this fully answers your inquiry, I remain