

**Opinion No. 52-5605**

November 12, 1952

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

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

{\*317} This is in reply to your letter of November 7th concerning the proper counting of ballots in the recent election.

Your question was as to how the votes should be scored in instances where in the race for state representative in which each elector was {\*318} entitled to vote for two candidates, but voted for only one by marking in the square next to the candidate's name, but had also marked an X in the circle above the party list of candidates, which list carried the names of two other candidates for representative.

Graphically such a ballot may be illustrated this way:

**Republican**

Ticket

(X)

State

Representatives

(vote for two)

John Doe \_\_\_\_

Richard Roe \_\_\_\_

**Democratic**

Ticket

( )

State

Representatives

(vote for two)

John Brown [X]

Henry Smith []

Such a ballot must be scored as one vote for John Brown with no votes scored for any of the other candidates for the office of State Representative.

In part, § 56-313, N.M.S.A., 1941 Comp., which is Sec. 4 of Ch. 41 of the Laws of 1927, reads as follows:

"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."

The foregoing paragraphs clearly contemplate the possibility of an elector marking a ballot as illustrated and just as clearly states how such a ballot must be scored by the election officials. Such a ballot can only be scored for the candidate whose name the elector has designated by marking an X in the box adjoining that name.