

Opinion No. 53-5850

December 1, 1953

BY: RICHARD H. ROBINSON, Attorney General

TO: Beatrice B. Roach Secretary of State State Capitol Building Santa Fe, New Mexico

{*269} On November 12, 1953, you addressed an inquiry to this office concerning an interpretation of the case of Teles vs. Carter, which is Case No. 5687 in the Supreme Court of New Mexico, not yet reported. That case held that a check [checkmark] mark cannot be counted by reason of its being a distinguished mark. The law concerning this matter was fully discussed in that case and our Supreme Court chose the matter restricted view on the subject. They held that anything other than a X in any of the squares is a distinguishing mark. The question was not decided in that case as to whether or not one check [square root] mark invalidate the entire ballot in case an X was placed elsewhere on the ballot. The rationale of the decision, as stated above, is based upon the question of a distinguishing mark upon the ballot. The Supreme Court, it is apparent, intended to hold that any distinguishing mark on the ballot would invalidate the ballot.

Therefore, it is the opinion of this office that in the event a check [square root], or any mark other than an X, is placed anywhere on the ballot, the entire ballot is void and of no force and effect and the vote for any office is thereby nullified and cannot be counted by the election officials. We realize that this is a departure from our previous advice, which advice was based upon the theory of "intent of the voter". In view of the aforementioned decision by our Supreme Court, we see no escape from the strict interpretation which we now place upon the law and so hold that any distinguishing mark whatsoever invalidates the entire ballot.

We sincerely hope that this answers your inquiry.

By: Fred M. Standley

Assist. Attorney General