

## Opinion No. 53-5872

December 15, 1953

**BY:** RICHARD H. ROBINSON, Attorney General

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

{\*301} In your letter dated December 9, 1953, you referred to the voting machine law which requires the voting machines to remain locked for thirty-one (31) days after the holding of any election at which such machines are used. You inquire whether this provision would prevent the use of voting machines in the coming municipal elections to be held on April 6, 1954, in view of the fact that the primary elections are to be held on May 4, 1954.

§ 56-384, 1941 Comp., p.s., provides as follows:

"The voting machine shall remain locked against voting for a period of thirty-one (31) days and then shall have the seal broken only on the order of a district judge having jurisdiction in the county, such order to be entered on the minutes of the district court of that county, and if in the opinion of such district judge contest is likely to develop, shall remain locked for such time as the district judge may direct; provided, however, such time shall not be for a period of time that will interfere with or prohibit the use of such machines in a subsequent election. Except, that on the order of any court of competent jurisdiction or on the order of any legislative body the seal may be broken for the purpose of proper investigation and when such investigation is completed, the machine shall again be sealed and across the envelope containing the keys shall be written the signature of the persons or person having broken same. Irregular ballots shall be preserved in the same manner and for the same length of time as now provided by law for other ballots."

It is noted that the proviso authorizes the district judge to shorten the time beyond thirty-one (31) days in which voting machines shall be locked but this section does not authorize district judges or anyone else to clear voting machines within the thirty-one (31) days period.

§ 56-366, 1941 Comp., p.s., authorizes county commissioners in any county to adopt for use in all elections, in one or more precincts within the county, voting machines approved by the State Voting Machine Committee and provides that after such adoption, such voting machines shall be used at any and all elections and primary elections, municipal, county, {\*302} district or state held in that county or any part thereof and designated for voting by machines. This language would seem to be mandatory and require that voting machines be used in municipal elections after they have been adopted for use by county commissioners in areas within a municipality. However, § 56-368, 1941 Comp., p.s., merely authorizes county commissioners to lease to other political subdivisions, such as municipalities, voting machines which are

to be used in elections within such political subdivisions. Since this section does not make it mandatory that the county lease county voting machines to municipalities, it appears that it is not absolutely mandatory that such machines be used. From an examination of the entire voting machine law, and the sections above mentioned specifically, it is our opinion that unless and until the Legislature sees fit to change the law, county voting machines may not be used in the coming municipal election if they are intended to be used in the following primary election, which is set for a date less than thirty-one (31) days after the municipal elections. Even though it were held that such machines could be used, under the circumstances the county commissioners would be taking a risk of being unable to use the machines in the following primary in the event a contest in the municipal elections should develop which would necessitate keeping the machines intact until the contest had been ended or the machines ordered cleared by the Judge after the thirty-one (31) day period.

Difficulty may arise from the use of ballot boxes owned by the counties, in municipal elections, due to the provisions of § 14-1305, 1941 Comp., which provides that the ballot boxes and ballots therein contained shall be preserved as county clerks are now required to preserve the same. Under the general election laws, county clerks are required to preserve the ballot boxes and ballots intact for a period of seventy-five (75) days after completion of the State Canvass. Since this municipal law requires city clerks to preserve ballot boxes and ballots for the same period, any ballot boxes which are used in a municipal election would not be available for use in the primary following in less than seventy-five (75) days. It is, therefore, apparent that municipalities must obtain their own voting machines or ballot boxes or else obtain ballot boxes from counties which will not be needed in the primary election.

By: C. C. McCulloh

Assist. Attorney General