

Opinion No. 54-5920

March 15, 1954

BY: RICHARD H. ROBINSON, Attorney General

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

{*363} In your letter dated February 23, 1954, you ask ten questions regarding election laws in precincts where voting machines are to be used in the primary election. In answering your questions, we shall state the same separately with separate answers to each question. Your questions are as follows:

1. In what quantities must paper ballots be supplied by County Clerks to the polling places for which automatic voting machines have been purchased and allocated?

Section 56-387, 1941 Comp., pocket supplement, provides, in part, as follows:

"The provisions of all other laws relating to the conduct of elections or primary elections shall so far as practicable apply to the conduct of elections and primary elections where voting machines are used, unless herein otherwise provided; . . ."

Section 56-309, 1941 Comp., provides that ballots shall be provided in each election district or precinct equal to 10% in excess of the total number of names of electors legally registered as shown by the registration books.

Since voting machines are to be used in the precinct or election districts involved, it is our opinion that only ballots to the amount of 10% of the total number of registered voters would be necessary to have printed. Paper ballots are only required to be used under the voting machine law in the event a voting machine should become disabled or in the event a person presents himself to vote by triplicate registration affidavit when his name does not appear in the registration book.

Only the number of paper ballots estimated to be necessary for triplicate registration voting should be furnished voting divisions using voting machines. The balance of the emergency ballots should be retained by the clerk and used only in cases of emergency or supplying additional ballots for triplicate registration voting if required.

2. Shall the law be followed in such instance concerning the numbering of ballots for each voting machine election district, pursuant to § 56-307, N.M.S.A., 1941?

Since the use of paper ballots will be made only in exceptional circumstances and in occasional instances to take care of voting by persons presenting a triplicate registration certificate whose name does not appear in the registration book, it is suggested that the entire 10% required for the county as to precincts or election districts using voting machines be numbered consecutively from No. 1 to the total number of ballots being

printed and that in the distribution of such paper ballots, the clerk keep an accurate record of the number delivered to each voting division in order that a careful check may be made as in the ordinary case.

3. Will all such ballots for special use in voting machine polling places be invariably printed in both English and Spanish, as per § 56-307?

Since the law specifically requires all ballots to be printed in English and Spanish, this requirement is mandatory.

4 (a). Shall separate ballots be printed and supplied individually {**364*} for each voting machine precinct for voting on candidates for justice of the peace and constable, as set forth in § 38-102?

Since the voting machine law requires the machine to be set up in order to vote upon all candidates for each party and likewise the ballot labels of the voting machines are required to contain the names of the candidates, it is considered that where voting machines are being used, this law supersedes § 38-102 requiring separate ballots for justices of peace and constables and that the same would not be required except in the amount necessary to take care of emergency breakdowns of the machines and voting by triplicate registration affidavits where the voter's name does not appear in the registration book, as discussed in answer to Question No. 1.

No separate ballots are required in precincts where there are no candidates for justices of the peace or constable, since voting for write-in candidates is not permissible in the primary.

4 (b). Shall such separate ballots for justice of the peace and constable in each such precinct also be numbered "as are other ballots for other county officers . . ." (§ 38-102).

It is our opinion that where separate ballots are furnished to each precinct the same should be separately numbered for each precinct so furnished since candidates for justice of peace and constable are only voted upon by voters in the respective precincts and a county-wide numbering device, as suggested in answer to Question No. 2, would not be feasible in instances where different candidates appear on the ballot for different precincts.

5. To protect the secrecy of the ballots of electors who are to be allowed to use paper ballots at voting machine polling places, must each such polling place be supplied with a curtained voting booth or compartment as required by § 36-311?

At least one voting booth should be supplied to take care of the voting that may be necessary for voting by paper ballots at voting machine polling places.

6. Shall "Instructions to Voters" posters be posted in each voting machine polling place in full compliance with § 56-312?

Section 56-371, 1941 Comp., pocket supplement, provides for displaying facsimile diagrams of the ballot labels on voting machines, however, since paper ballots may be used in each precinct in certain instances as above discussed, we believe that instructions to voters in the use of paper ballots should also be posted in compliance with § 56-312.

7. In what quantity should the County Clerk supply to the voting machine polling places the sample paper ballot required by § 56-325?

Section 56-325 requires sample ballots equal to 20% of the number of official ballots to be furnished each voting division. Since official ballots to the number of only 10% are to be prepared in voting machine districts, 20% of the number of official ballots only would be required which would be 2% of the total registered voters.

8. Shall stamped, addressed envelopes of the sort prescribed by Paragraph (i), § 56-324, be supplied to the officials of each voting machine polling place -- in addition to the envelopes required by {*365} Paragraph (j) of the same section and mentioned in your unnumbered opinion dated February 3, 1954?

Since at least one ballot box and paper ballots are being furnished to each voting division using a voting machine, the stamped addressed envelopes described in Paragraph (i), for transmitting the key to the ballot boxes to the District Judge should be furnished.

9. Shall the voter assistance affidavit forms prescribed in § 56-329 be furnished to all voting machine polling places and in what quantity? (This, for instances where an elector voting on the triplicate copy of his affidavit of registration may likewise require assistance as provided by law.)

Section 56-379, 1941 Comp., pocket supplement, provides as follows:

"In addition to the sample ballots and the model hereinbefore mentioned, which shall be prominently displayed, and the particular attention of each voter thereto called by the presiding officer, if any voter after entering the machine, but before the curtains thereof are closed, shall desire further instructions, two (2) judges of different political parties shall give such instruction without asking, persuading or otherwise trying to induce such voter for or against any ticket, candidate, amendment, question or proposition. Finishing instruction, the two (2) shall retire, whereupon such voter shall close the curtain and vote as in the case of an unassisted voter. Only one (1) voter shall be admitted at a time to the machine, and no voter shall be permitted to keep the curtain of a machine closed longer than two and one-half (2 1/2) minutes."

This section apparently only covers the situation where a voter is seeking assistance and instruction in connection with the operation of a voting machine.

Section 56-329, 1941 Comp., relating to assistance to the voter in marking ballots, would be applicable in connection with voting by voting machine and an affidavit of the voter desiring such assistance is required in the event a voter is blind or physically disabled or who is unable to read the English or Spanish language. By filing an affidavit desiring assistance, such disabled voter could be accompanied inside the voting machine curtain by two poll clerks, one from each party, who could assist him in voting by a machine. An affidavit for assistance is not required to obtain instruction in operating the voting machine by a normal person, however, such affidavits are required before the poll clerks could accompany a blind, disabled, or person who is unable to read, into the voting machine booth. The affidavits of voters desiring assistance, which are required, should be deposited in the ballot boxes together with the ballots of persons voting by triplicate registration affidavit whose name do not appear in the registration book, which are required to be sealed in an envelope and not counted.

10. Specifically how and on what ballots cast at any or each voting forms shall the number of paper machine polling place be reported to the County Clerk and to the Secretary of State?

Section 56-335 pertaining to rejected ballots provides that they shall be placed in an envelope, sealed and marked "rejected" and said elector's {366} name entered upon envelope and entered upon the poll books with his consecutive number together with the number of ballot so furnished. This procedure should be followed also in the case of votes by persons not appearing in the registration book who desire to vote by triplicate registration affidavit.

In the event of a breakdown of a voting machine, requiring the voting to be done entirely by paper ballots, such ballots should be deposited in the ballot boxes, counted and certified in the same manner as in districts where no voting machines are used.

It is suggested that although tally books may seem superfluous if voting machines are used, yet their necessity may arise and that they be furnished to all voting divisions, and totals as shown by the voting machines inserted in the proper spaces in the tally books. The poll books, tally books and ballot boxes containing affidavits of assistance, rejected ballots, etc., should be returned to the county clerk with the certificates and the necessary information should also be forwarded to the Secretary of State as in the case of elections held without the use of voting machines.

By: C. C. McCulloh

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