

Opinion No. 54-5897

February 3, 1954

BY: RICHARD H. ROBINSON, Attorney General

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

{*333} Receipt is acknowledged of your letter dated January 19, 1954, in which you request an opinion from this office pertaining to the conduct of elections by the use of voting machines.

{*334} Your first question is as follows:

"Section 56-329 provides that an elector who is blind or physically disabled may be actively assisted by certain election officials in marking his ballot in precincts wherein ballot boxes are used, but is any comparable assistance authorized or permitted in precincts where voting machines are now used pursuant to Chapter 192, Laws of 1951?"

Section 23 of Chapter 192 of the New Mexico Session Laws of 1951 provides 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; provided, however, it is declared to be the public policy of this state that the provisions herein, providing for the use of voting machines at elections, are regulations to detect and punish fraud, and to preserve the purity of the ballot box; and any voter who fraudulently or illegally casts a ballot, or who casts a fraudulent or illegal ballot upon a voting machine, at any election, (after casting of such fraudulent or illegal ballot, or such fraudulent or illegal casting of a ballot has been established by final adjudication before a court of competent jurisdiction and by competent evidence,) shall be compelled and required to disclose the names of the candidate or candidates for whom he cast such ballot at such election, and the ballot cast by him upon any question or questions at such election in any proceedings instituted under the laws of this state in any court of competent jurisdiction, and whoever in such proceedings shall swear and/or testify falsely, shall be deemed guilty of the offense of perjury, and shall be subject to the penalties provided for such offense by the laws of this state."

The first part of this section specifically provides that 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. Since there are no other provisions in this Chapter 192, New Mexico Session Laws of 1951, nor any other statute in the New Mexico Session Laws, Section 23 of Chapter 192 New Mexico Session Laws of 1951 governs.

It is the opinion of this office that an elector who is blind or physically disabled may be actively assisted by certain election officials in marking his ballot in precincts wherein voting machines are used, as was given to an elector under Section 56-329, N.M.S.A., 1941 Compilation, if said elector was physically disabled or blind when casting or making his ballot in precincts where ballot boxes were used.

Your second question reads as follows:

"Section 56-319 (10) provides that an elector in possession of a proper triplicate copy of his affidavit of registration will be given a ballot to vote even though the original copy does not appear in the bound book of affidavits for his polling place wherein a ballot box is used; is it legally possible for an elector to be permitted to vote in a voting machine precinct in any case {*335} where the original of his affidavit of registration does not appear in the bound volume as aforesaid?"

Again Section 23 of Chapter 192 New Mexico Session Laws of 1951, answers your question No. 2, wherein it is specifically stated that 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 or primary elections where voting machines are used unless herein otherwise provided.

I have also checked the 1953 New Mexico Session Laws and find no statute to take care of a problem as the one presented here.

It is therefore the opinion of this office that an elector in possession of a proper triplicate copy of his affidavit of registration is entitled to vote where voting machines are in use in any precinct, even though the original copy of his affidavit of registration does not appear in the bound book of affidavits at his polling place, provided that the said voter votes by ballot, which ballot should be provided by County Clerks, in accordance with Section 56-309, N.M.S.A., 1941 Compilation, and said ballot placed in a ballot box to be furnished by the County Clerk and placed in an envelope and counted only in case of a recount or contest and not otherwise, as provided in Section 56-245, N.M.S.A., 1941 Compilation.

We trust that this fully answers your inquiries.

By: Hilario Rubio

Assist. Attorney General