

Opinion No. 54-5962

June 1, 1954

BY: RICHARD H. ROBINSON, Attorney General

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

{*421} We are in receipt of your letter of May 11 concerning the position on the ballot of the two political parties and the position on the voting machine of such parties.

Section 56-307, Fifth paragraph, reads as follows:

"The party name and emblem and list of candidates for the Republican party shall be placed in the first column on the left hand side of the ballot; of the Democratic party in the second column, and of other parties in the order in which the certificates of nomination have been filed. The line of demarcation between the party columns shall be inverted nonpareil rule."

Section 56-370 provides as follows:

"Ballot labels. -- That portion of cardboard, paper, or other material, placed on the front of the machine and containing the names of the candidates or a statement of the proposed constitutional amendment, or other question or proposition to be voted on, shall be known as a ballot label. The ballot labels shall be supplied by the county clerk and shall be printed in black ink on white material of such size as will fit the machine, and in plain, clear type shall be set for the candidate's name with such other wording and language as is required by law."

The last quoted Section deals with voting machines.

Thus, it can be seen that the preparation of ballots must be conducted in such a way that the Republican party emblem and list of candidates shall run vertically down the left hand column of the paper ballot. In view of the mechanical make up of a voting machine, such is not possible, as on a voting machine the candidates are listed on a horizontal fashion. However, there is no specific requirement in the law as to which party shall have the upper row of keys.

Section 56-370 places the burden of furnishing the ballot labels on the county clerk and until such is amended, we believe that the county clerk may decide which party shall have which position on the voting machine so long as such position is consecutive, that is to say, one {*422} party having the top row of keys, the second party the second row of keys, and the third party the third row of keys etc.

Therefore, it is the opinion of this office that in the use of paper ballots, the Republican party shall have the left hand column, but in the case of voting machines, the position

on such voting machines shall be entirely at the discretion of the county clerk whose duty it is to prepare the ballot labels.

We sincerely hope that this answers your inquiry.

By: Fred M. Standley

Assist. Attorney General