

## Opinion No. 54-6067

December 31, 1954

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

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

{\*542} On December 22, we received a request from your office concerning the legality of consolidating polling places in municipal, school board and special elections. The question is whether or not in these elections a voter may be permitted or required to vote in a precinct not his own.

{\*543} The Supreme Court of this State in the case of **State of New Mexico, ex rel Board of County Commissioners of Harding County, et al vs. Board of County Commissioners of the County of Quay**, filed December 15, 1954, and numbered 5830, held that Section 1, Article 7 of the New Mexico Constitution, which reads as follows:

"Every \* \* \* citizen of the United States, who is over the age of twenty-one years, and has resided in New Mexico twelve months, in the county ninety days, and in the precinct in which he offers to vote thirty days, next preceding the election \* \* \* shall be qualified to vote \* \* \*"

means that a person must be afforded an opportunity to vote **in his precinct**. Thus, any statute that permits consolidation of precincts is unconstitutional and regardless of the size of the area involved or the number of persons living in a precinct in any election, there must be a polling place in each precinct, even though only a small portion of a precinct happens to lie within the municipality or within the school district.

The Supreme Court of this State has held that a vote cast outside of the precinct wherein the voter resides, is void and that it must be cast in person in the precinct in which the voter has resided for the preceding thirty (30) days. **Thompson v. Scheier**, 40 N.M. 199, 57 P. 2d 293; **Chase v. Lujan**, 48 N.M. 261, 149 P. 2d 1003, and **Arledge v. Mabry**, 52 N.M. 303, 197 P. 2d 884.

This, of course, does not mean that voting divisions within a precinct cannot be consolidated in any given election, but a polling place must be provided in any precinct a portion or all of which is involved in any election.

Therefore, it is the opinion of this office that any statute providing for consolidation of precincts in any given election is void and unconstitutional unless the old precincts are abolished and a new precinct, including the area desired to be consolidated, is legally created. If a precinct, or any portion thereof, is involved in any election whatsoever, in this State, at least one polling place must be provided therein and all of the voters in

that precinct involved in the election must be permitted and required to vote in that polling place.

We sincerely hope that this answers your inquiry.

By: Fred M. Standley

Assist. Attorney General