

Opinion No. 55-6085

January 25, 1955

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. W. P. Kearns, Jr. Assistant District Attorney Eighth Judicial District, Raton, New Mexico

Your letter, presenting several questions in connection with school district elections and the effect thereon of Attorney General's opinion No. 6067, has been received.

This office is not unmindful of the difficult problems raised by the above opinion. However, in view of the rulings of the Supreme Court of New Mexico cited in said opinion, the conclusions arrived at are inevitable. A voter must be afforded an opportunity to vote in the precinct wherein he legally resides and a vote cast outside thereof is void.

Since school district boundaries do not necessarily follow precinct lines, the following situations, which you inquire about, may arise:

First. Two or more school districts may extend into the same precinct. Your inquiry in connection with this situation is: Should a voter registered in such a precinct vote for the candidates of the school district embracing the larger portion of the precinct or those of the school district wherein he actually resides? Our opinion is that he must vote for the candidates of the school district wherein he actually resides. Where such a situation is encountered, it is apparent that as many voting places must be provided within the precinct as there are school districts or portions thereof in said precinct. The following statutes warrant this conclusion:

Section 73-10-5, New Mexico Statutes Annotated, 1953 - that part which still retains constitutional validity and reading as follows:

"Said election shall be called by the municipal board of education and shall be called, conducted, returned and canvassed by said board **as in the case of officers in the respective incorporated cities, towns, and villages**. Registration books showing qualified voters must be used as in general election"

Section 14-14-1, New Mexico Statutes Annotated, 1953 - that part which still retains constitutional validity and reading as follows:

"In all municipal elections the same voting divisions may be used as are used at general elections **and if any such voting division be partly within and partly without the corporate limits of any municipality, then and in that event, that portion of such division as may be within the municipal limits shall constitute a voting division for the purpose of municipal elections**"

Since municipal school district elections are to be conducted in the same manner as municipal elections and since in the case of municipal elections only those within the municipality may vote in the particular election, the conclusion is inescapable that in municipal school board elections a voter must vote for the candidates of the school district wherein he resides. Thus the boundary lines of the school districts within the precinct must be established and the residence of voters therein segregated accordingly.

The following statutes should further be considered:

Section 3-2-28, New Mexico Statutes Annotated, 1953:

"For the purpose of municipal elections, the clerk of each incorporated municipality shall obtain from the county clerk the original affidavits of registration for all precincts and election districts in whole or in part within such municipality at least three (3) days prior to any municipal election and such original affidavits of registration as show on their face that the elector is a resident within the limits of such municipality shall constitute the registration list for such municipal election. Said affidavits of registration shall be returned to the county clerk upon the close of such municipal election as other supplies are required to be returned by election officials at general elections."

The above quoted statute thus provides that the original affidavits of registration for those precincts or parts thereof within a school district, since school district elections must be conducted as municipal elections, must be secured from the county clerk and then provided to each voting place as the residence of each voter on the face of the affidavits may appear. The problem immediately arises as to whether or not the permanent registration books are to be divided within the precinct where two or more school districts extend into the same precinct. Section 3-2-27, New Mexico Statutes Annotated, 1953, providing that the permanent registration record shall be delivered to the election judges, seems to militate against allowing the county clerk to break up the permanent registration book, anything in § 3-2-28 to the contrary notwithstanding. In these circumstances, I am unable to provide an answer to the legal question involved. However, I can point out to you the method employed elsewhere in the state where such a situation arises. The registration book, with the affidavits locked therein, is provided to one of the divisions within the precinct and certified lists of the electors, indicating their residences thereon, are provided to the other divisions within that precinct. After the election the lists, with the numbers of the ballots indicated thereon, are returned and proper entries made into the permanent record by the election judges. I cannot vouch for the legality of this procedure. However, if the voters, within precincts wherein two or more school districts extend, are not to be disenfranchised, it seems that this method, or something similar, must be employed.

Second. A school district may extend into two or more counties. Your inquiry in this situation is: When the registered voters of Precinct 30 at Kiowa, Colfax County, being also residents within School District 35 of Union County, present themselves to vote in Precinct 30 of Colfax County, what ballot should they receive?

As outlined in the first situation above, the voter must vote for candidates of the school district wherein he maintains his residence. Thus, the ballots to be furnished to these voters must be those affecting the election in School District 35, and, as in above, a voting place must be furnished them in that part of the precinct within their school district.

Third. Same situation as second above. Your inquiry in connection herewith is: How can the Springer Board of School District 24, Colfax County, make provisions for registered voters attached to said school district in Gladstone Precinct, Union County, to vote for candidates of School District 24?

They must see to it that a voting place is provided in that portion of the precinct in Union County into which School District 24 extends. The affidavits of registration, or list as above, in the precincts involved must then be secured from the Clerk of Union County and provided to judges and clerks at that voting place.

Trusting that this will be of some aid to you in the forthcoming elections, I am

By Santiago E. Campos

Assistant Attorney General