

## Opinion No. 55-6266

August 30, 1955

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

**TO:** Mrs. Natal Smith Buck, Secretary of State, Santa Fe, New Mexico

By letter dated August 25, 1955, you have requested our opinion as to the validity of New Mexico absentee voting statutes.

The 1955 Session of the Legislature passed two statutes relating to absentee voting, Chapter 204 and Chapter 256. Chapter 256 is a general statute relating to absentee voting. In all material particulars it is the same statute that was enacted as Chapter 53, Laws of 1953, which was repealed by Chapter 256, Laws of 1955. Chapter 204 is a statute providing for registration and voting by members of the Armed Forces.

This office in Opinion No. 5821 ruled that Chapter 53, Laws of 1953, was unconstitutional. A copy of this opinion is enclosed for your information. Inasmuch as Chapter 256, Laws of 1955, is in all material particulars the same statute as Chapter 53, Laws of 1953, we feel that the reasoning in Opinion No. 5821 has equal application to it, and therefore hold that, in our opinion, this Chapter is unconstitutional.

Any question as to whether the present Supreme Court would continue to follow the doctrine of *Thompson v. Scheier*, 40 N.M. 199, 57 P. 2d 293, upon which Opinion No. 5821 was based, appears to us to have been dispelled by the recent decision of the Supreme Court in *State ex rel. Board of County Commissioners of Harding County v. Board of County Commissioners of Quay County*, 59 N.M. , 277 P. 2d 960, where the doctrine of requiring personal presence at the polls was reaffirmed by a unanimous court.

Chapter 204 in and of itself sets no machinery for absentee voting. It is merely designed to implement Federal legislation recently passed (Public Law 296, 84th Congress First Session) with respect to procedure for sending ballots to military personnel overseas. We do not hold that this law is unconstitutional, but merely that it has no effect inasmuch as there is no valid absentee voting law in the State of New Mexico upon which directions contained in this law can be bottomed. We wish to emphasize that Chapter 204 is in no wise the same type of law as Chapter 2, Laws of 1944, which gave absentee service men the right to vote for Federal officials during World War II. This law expired and none has been passed by the Legislature to take its place.

From the foregoing, it is our opinion that New Mexico has no valid legislation providing for the casting of absentee ballots by military personnel or anyone else.

By Walter R. Kegel

Assistant Attorney General