

Opinion No. 56-6428

April 25, 1956

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. John D. Murphy, District Attorney, Second Judicial District, Bernalillo County Court House, Albuquerque, New Mexico. Attention: Mr. H. Leslie Williams, Assistant District Attorney

You have asked our interpretation of the instructions furnished by the Secretary of State to election officials. You are particularly concerned about the second sentence thereof which reads as follows:

"Or, if a voting machine is used, the number to be entered is the figure shown on the public numbering counter on the machine immediately after the voter has voted."

You state that it has been the practice in Bernalillo County, in voting divisions where more than one voting machine is used, to provide the ballot numbers as if only one machine had been used.

It is our opinion that this procedure is not in accordance with the law, inasmuch as Section 3-4-15, N.M.S.A., 1953 Compilation, provides that the identification of each machine used in each voting precinct shall be indicated on the registration list. Said section is quoted as follows:

"The presiding officer shall be in general charge of the poll and see that one (1) or more of the clerks of the election properly checks off the name of each voter from the registration list before such voter casts his ballot, and shall provide for the numbering of all ballots by placing the number on a list containing the names of each voter kept for such purposes, corresponding to the number on the public numbering counter, opposite or alongside the name of each voter, **including the identification of each machine used in such voting precinct**, after such voter casts his ballot; and it shall further be the duty of one (1) of such poll clerks to see that the voting machine is not tampered with and attend the machines at all times. He shall inspect the ballot labels after each voter leaves the machine to see that none have been tampered with and see that the machine has not been injured. He shall see that the coverings of the counter compartments of the machine are never unlocked or opened so that the counters are exposed during voting." (Emphasis Supplied.)

It is suggested that an easy manner of handling this would be to designate one machine "A" and another "B", etc., and assign a voter to a particular machine with the appropriate number such as 212A and 212B, etc., and record said number in the book of affidavits supplied to each polling place.

I realize that this will perhaps present additional difficulties for the election officials, however, in view of the language contained in the above quoted section of the statutes, I see no other alternative.

By: Jack A. Smith

Assistant Attorney General