

## Opinion No. 56-6418

April 9, 1956

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

**TO:** Mr. M. L. Armijo, Jr., Assistant District Attorney, Fourth Judicial District, Las Vegas, New Mexico

You have presented for our opinion the questions:

1. When voting machines are used may a voter demand assistance as provided for under Section 3-3-30 and 3-3-20 (15), N.M.S.A., 1953, and if he may and does so;
2. May that voter have his ballot examined by his party challenger as provided in the same statute?

Your first question has been answered in the affirmative by a previous opinion of this office. Attorney General's Opinion No. 5920. A copy of that opinion is enclosed for your information.

Section 3-3-20 (15), N.M.S.A., 1953, regulates the manner in which a voter may be assisted under the original and ordinary system of voting, i.e., non-mechanical voting, and by virtue of the above opinion, it applies as well where voting machines are used. That statute, in part provides:

"Where any voter requires assistance because of blindness, defective eye-sight, physical disability which prevents marking the ballot, or inability to read either the English or Spanish language sufficiently well to do so, the judges shall require him to take the oath on the form headed 'Affidavit for Assistance' included with the election supplies. Either judge may swear the voter. The voter must sign or mark such affidavit. All blanks must be filled in by the election officials, and the affidavit, after being completed, must be deposited in the ballot box. Such voter shall then be assisted by two (2) poll clerks who shall accompany the voter into the booth and in the presence of each other assist said voter in marking his ballot. No judge, clerk, challenger, party worker, sheriff, deputy sheriff, or other person shall go into any booth while occupied by an elector marking his ballot, or mark any voter's ballot, except the two (2) poll clerks as herein provided. **Provided that if any voter so assisted shall so request, he may show his marked ballot to his party challenger to ascertain whether it has been marked as the voter instructed.. .**" (Emphasis supplied)

Thus, under the terms of this statute your second question is also answered in the affirmative.

But the further practical problem arises; how may Section 3-3-20 (15) be administered where voting machines are used and in connection with the provision therein that a

voter in this class may have his party challenger view his ballot to ascertain that it has been marked in accordance with his desires?

You state that it is your assumption that once the voter enters the booth and the curtains are drawn by drawing the master lever to prepare the panel for voting, that, thereafter, the curtains cannot be drawn aside prior to the time the curtains are opened after the ballot is cast. Your assumption is not completely correct. Although the curtains may not be drawn aside at the top while the pointers are in position to vote, nevertheless, a person may draw the curtains and observe the panel and the position of the pointers without affecting in any manner the selectory mechanism.

Thus, the following suggested procedure should be observed. A voter in a class covered by Section 3-3-20 (15) may be accompanied into a booth by two poll clerks and the curtains closed. After the necessary assistance is rendered by the poll clerks and after the pointers are in position to vote the curtains may be opened, not by operation of the master lever but by pulling the curtains aside by hand, and the party challenger called. The party challenger may then enter the booth, or without entering the booth may look in, and confer with the voter to see that the pointers are in the positions desired and then the ballot cast.

I trust the above answers your inquiries.

By: Santiago E. Campos

Assistant Attorney General