

Opinion No. 56-6532

October 24, 1956

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. John D. Murphy, District Attorney, Second Judicial District, Bernalillo County Court House, Albuquerque, New Mexico

You have asked the opinion of this office on three questions relating to the closing of the polls in the coming election. These questions are:

- "1. At 7:00 P.M., should any person in line outside the polling places and who has not yet announced his name to the poll clerks be allowed to vote?
2. Should any person in line inside the polling place and who has not yet announced his name to the poll clerks be allowed to vote?
3. Should any person who has announced his name to the poll clerks and has had it entered in the poll book, but has not yet gone into the voting machine, be allowed to vote?"

The view which we take of the matter makes it unnecessary that we answer these questions separately.

Section 3-3-27, N.M.S.A., 1953 Compilation, governing the time at which the polls are opened and closed, in the last sentence provides:

". . . The Polls shall be closed at seven (7) o'clock in the evening, **and after such time no ballot shall be received.**" (Emphasis Ours)

The underlined language above leaves no room for construction. And so it is that from and after 7:00 o'clock no ballots shall be received by the officials, irrespective of whether voting machines or the ordinary type of balloting is employed. Thus it makes no difference that the person is in line outside the polling place and has not announced his name to the poll clerk as in your Question 1, or that a person is inside the polling place and has not yet announced his name to the poll clerk as in your Question 2, or that he has announced his name to the poll clerk but has not yet gone into the voting machine to vote. At 7:00 o'clock the machine should be locked where voting machines are used, and where ordinary balloting is employed the officials must not allow the deposit of any ballots in the ballot boxes after this time.

I realize that this ruling is a strict one. However, you can see that the language of the statute permits no other conclusion.

In order that persons be not denied the voting privilege by being late, Section 3-10-7, N.M.S.A., 1953 Compilation, is called to your attention. That section, as you know, provides that any registered elector may absent himself two hours from his employment, at such time as the employer specifies, in order to vote.

Further, I am sending a copy of this opinion to all the county clerks and district attorneys throughout the State, and also a copy will go to all county chairmen, both Democratic and Republican, in order that these may advise as many voters as possible that voting should be done as early as possible. Any efforts which you can make toward the widest publicity possible on this ruling would be appreciated.

I trust the above answers your inquiries.

By: Santiago E. Campos

Assistant Attorney General