

Opinion No. 56-6525

October 10, 1956

BY: RICHARD H. ROBINSON, Attorney General

TO: H. Leslie Williams, Assistant District Attorney, Second Judicial District, Bernalillo County Court House Albuquerque, New Mexico

We have your letter of September 24, 1956, in which you ask an opinion upon the following question:

"Do the provisions of § 3-3-18, N.M.S.A., which require the signature of election officials under the certificates printed on the backs of the poll book and the tally book, provide the only oath which must be taken by election officials in voting divisions which use voting machines?"

We are of the opinion that the poll clerks are required to take the oath, as prescribed by § 3-3-35, N.M.S.A. We agree with you that the election judges would not be required to take this oath. The only oath that is required of election officials other than this specific one for the poll clerks is found under the provisions of § 3-3-18, N.M.S.A., 1953 Comp., which reads as follows:

"At all elections held within the state at large, whether general, special or primary elections, each and all of the election officials serving in each precinct shall sign the certificate required by law to be printed upon the back of the poll books, and each and all of said election officials shall also sign the certificate required by law to be printed on the back of the tally books of said precinct and by signing, each election official shall be deemed to have taken and subscribed to an oath that he will discharge and has discharged the duties of his respective office faithfully and impartially."

Clearly, we are of the opinion that when an election official signs the certificates required by this section that such official is deemed to have taken the oath that he will and has faithfully discharged the duties of his office, and that this is the only oath that is required, namely, the signing of these certificates.

We would point out that in precincts where the voting machines are used there is no tally book. However, § 3-4-20, N.M.S.A., 1953 Comp., (1955 p.s.), provides for a statement of canvass, which is to be prepared by the election officials upon a form approved by the Secretary of State. Such certificate, in our opinion, would coincide with the certificate which is found printed on the tally book and would be deemed to be the same as tally book certificates where voting machines are used instead of the printed ballot method of voting.

In conclusion, we would point out that only the poll clerks would be required to take an oath under the provisions of § 3-3-35. All election officials, including the poll clerks,

would be required to sign the certificates provided for in § 3-3-18, N.M.S.A., 1953 Comp., and such signatures under the certificates would be deemed to be an oath and would be sufficient, inasmuch as there is no other statutory requirement for an oath by election officials.

Trusting we have answered your question, we remain

By Paul L. Billhymer

Assistant Attorney General