

## **Opinion No. 57-14**

January 21, 1957

**BY:** OPINION OF FRED M. STANDLEY, Attorney General Robert F. Pyatt, Assistant Attorney General

**TO:** TO: Mr. Homer W. Heathman, Jr., Educational Budget Auditor, Office of the State Comptroller, State of New Mexico, Santa Fe, New Mexico

### **QUESTIONS**

#### QUESTIONS

1. Can any candidate, or citizen, or group have a challenger or watchman inside the voting place at a school board election?
2. Can residents who are qualified voters living within the Picuris Pueblo which is within the limits of School District No. 4 in Taos County vote in the school board election?
3. Can a citizen serve as an election official at the school board election as clerk or judge without pay if he voluntarily offers his services?

#### CONCLUSIONS

1. Challengers can only be employed if the election is a partisan one with candidates running under party designation, and then can only be appointed by the party county chairman or party precinct chairman. Watchers can be appointed by two or more candidates.
2. If the pueblo is within the exterior boundaries of the district, and was not specifically excluded from the area covered by the district, residents of the pueblo who are otherwise qualified to vote may do so.
3. Yes.

### **OPINION**

#### ANALYSIS

You have stated that your questions pertain to election of members of the board of school directors of an independent rural school district. The election procedure for board members of independent rural school districts is the same as that provided for members of municipal school boards. Section 73-9-16, N.M.S.A., 1953 Compilation. In turn, a municipal school board election is called, conducted, returned and canvassed according to Section 73-10-5, N.M.S.A., 1953 Compilation, as in the case of municipal elections.

Section 14-14-4, N.M.S.A., 1953 Compilation, provides that other elections required to be held in the same manner as municipal elections shall be governed by Section 14-14-3. This last cited section in turn provides that "all elections for municipal officers shall in all respects be held and conducted in the manner prescribed by law in cases of county elections." Since county officials are elected at general elections, it follows that the provisions of the general election code govern your three questions. We deem the general election code to be the proper statutory authority despite Section 3-10-22, which provides that the election code does not apply to elections of school directors, among other elections, since this section itself is conditioned as follows: ". . . unless otherwise provided herein or by the laws governing such elections" -- meaning such otherwise excepted elections. As traced above, the statutory authority is clearly the general election code.

Relative to your question No. 1, both challengers and watchers can only be designated in the manner provided by law. The county chairman of any political party whose ticket is on the ballot may designate challengers. In default of designation by the county chairman, designation shall be by the precinct chairman. Such designation in either case shall be in writing. Section 3-3-14, N.M.S.A., 1953 Compilation. It is clear by this statute that unless there is a party ticket, the statute doesn't apply in any case. It is the understanding of this office that the particular election in question is to be non-partisan with no candidates appearing under a particular party label. If such is the fact, then no person can designate challengers. As to watchers, Section 3-6-3, N.M.S.A., 1953 Compilation, provides that "at elections for municipal officers any group of two (2) or more candidates may appoint, in a petition to be filed with the clerk of such municipality, two (2) persons in each voting precinct, who shall have the power of watchers, as aforesaid, at such municipal election." This would apply to the election in question, since municipal election provisions, insofar as this question is concerned, are applicable; and watchers could be appointed as above set forth. Of course, the petition would have to be filed with the chief clerical officer of the board, rather than with the municipal clerk.

As to your second question, it appears that there is some doubt as to whether or not Picuris Pueblo is actually within the limits of the district in question. Probably the Pueblo is within the district. If the Pueblo is within the exterior boundaries of the district, and was not specifically excluded from the area covered by the district, residents of the Pueblo who are otherwise qualified to vote may do so. Opinion of the Attorney General No. 6087, dated January 26, 1955.

Question No. 3 is governed by Section 3-6-9, N.M.S.A., 1953 Compilation, 1955 Supplement, which provides that election judges and clerks, and counting judges and clerks, shall receive as compensation \$ 10.00 each, payable within thirty days following the date of election. However, this is for the benefit of the officials in that it allows them recompense for services rendered. It is in their favor and may be waived by them. Consequently, said judges or clerks may serve without pay if they are willing to do so.

We trust that this fully answers your inquiries.