

**Opinion No. 57-244**

September 26, 1957

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

**TO:** Honorable Ruben Miera Acting Secretary of State Santa Fe, New Mexico

**QUESTION**

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Are §§ 3-14-1 to 3-14-10, both inclusive, N.M.S.A., 1953 Compilation, 1957 Supplement, constitutional?

CONCLUSION

No.

**OPINION**

ANALYSIS

This portion of the election law, being derived from Laws of 1955, Chapter 204, § 1 et seq., otherwise known as the "New Mexico Voting Assistance Act", amounts to a general, all inclusive absentee voting law. From a perusal of said law, it is clear that the primary intention of the Legislature was to authorize absentee voting for all classes of officers entitled to appear upon the New Mexico ballots.

In Opinion of the Attorney General No. 57-223, dated September 10, 1957, the question of a restricted absentee voting law, being confined to votes cast for presidential electors and members of the Congress of the United States, was considered. It was held in said opinion that such law was constitutional, the Legislature of this State being authorized to enact such legislation by virtue of direct grant of authority to the State Legislature from the Federal Constitution. Therein the New Mexico cases which have heretofore struck down absentee voting in general were collected and analyzed. Since such cited opinion was directed to the Honorable Natalie Smith Buck, you are referred thereto. A perusal of the cases cited in such Attorney General's Opinion would clearly disclose that a general absentee voting law for all officers entitled to appear upon the New Mexico ballots is unconstitutional as being repugnant to Article VII, § 1, Constitution of New Mexico. Yet that is exactly the type of statute presently before us. We hold it unconstitutional for the reasons set forth in the cases cited in Opinion of the Attorney General No. 57-223, supra.

As above stated, a reading of the New Mexico Voting Assistance Act will disclose that its primary purpose was to place into effect a general absentee voting law. Such main object of the enactment is unconstitutional, and this being so, all portions of such enactment must fall. *Ex Parte Bustillos*, 26 N.M. 449, 194 P. 886. Despite the fact that Laws 1955, Chapter 204, § 12 thereof contained a separability clause, such clause can be of little value in this instance for the reason as above noted. See *Safeway Stores, Inc. v. Vigil*, 40 N.M. 190, 57 P. 2d 287, holding that such clause is but an aid merely and is not binding upon the courts.

We hold Laws 1955. Chapter 204, void in its entirety.