

Opinion No. 58-63

March 26, 1958

BY: OPINION OF FRED M. STANDLEY, Attorney General Hilton A. Dickson, Jr.,
Assistant Attorney General

TO: Mr. Dan Sosa, Jr., District Attorney, Third Judicial District, Las Cruces, New Mexico

QUESTION

QUESTIONS

1. Can a person register for a municipal election up until three days prior to said election and be eligible to vote in said election?
2. Can a registered elector who changes his residence to another county within the State, accomplish registration for voting purposes by the filing and executing of an application for cancellation of his registration without applying for registration in the county to which he has removed, if he has, in good faith, asked the person registering him if anything additional needed to be done to accomplish his registration and was informed by the person registering him, a notary public, that he had fulfilled his obligation under the law?
3. Can a qualified elector prior to five days preceding any election, change his registration from a precinct within a voting division in Alamogordo to a precinct within the municipality of Tularosa and be eligible to vote in the municipal election in Tularosa?
4. With respect to Sec. 3-2-19, NMSA, 1953 Compilation, would a physical conveyance to the County Clerk of affidavits of registration, subsequent to 5:00 P.M. on the 30th day preceding any election, which conveyance was made to her at her home after she had closed her office but she filed on the subsequent date, enable the persons registering to vote in a Tularosa municipal election?

CONCLUSIONS

1. No.
2. No.
3. No.
4. No.

OPINION

ANALYSIS

The answer to your first question is found in a recent opinion of this office, No. 58-40, dated February 21, 1958, a copy of which is enclosed.

Turning to your second inquiry, concerning the manner of changing one's registration from one county to another, the statutory provision specifically governing is compiled as Sec. 3-2-18 and provides the following:

"A registered elector who changes his residence to another county within the state may, at any time within the period of registration, register in the county to which he has removed, **provided that before so registering** he shall appear before a registration officer in the county to which he has moved and make application for cancelation of his registration in the precinct or election district and county of former residence by executing and filing with the county clerk of the county to which removed an application in writing therefore. Said application shall be transmitted by the county clerk of such county to the county clerk of the county of former registration. Upon receipt of such application the county clerk of the county of former registration shall cancel the affidavits of registration of such person and file the same as provided herein for canceled affidavits of registration. Such affidavits shall be deemed canceled upon the execution and delivery of application therefor to the registration official of the county in which such elector seeks to register." (Emphasis ours).

From the language underlined, it becomes apparent that the procedure for cancelation is made a condition precedent to registering, or more correctly stated, reregistering. This conclusion is supported in giving consideration to the following.

By Sec. 3-2-6 (PS), a qualified elector may register in any county and precinct upon the "filling out and executing the affidavit of registration in triplicate . . . and filing the original and duplicate of same with the county clerk of the county in which such elector resides. . ." In the situation instantly considered, the procedure for making out the affidavit and filing the original would not be possible; no such affidavit would exist. Further, there is no provision permitting transferring of affidavits originally executed and filed in another county.

Accordingly, it is our opinion that a new registration affidavit must be filed subsequent to executing an application for cancelation of a former affidavit. The fact that an otherwise qualified elector is incorrectly advised in the premises is unfortunate, but such error will no wise serve legally to establish a person's changed registration.

Your third question calls for construction of Sec. 3-2-17 which provides:

"Any elector who, prior to thirty (30) days preceding any election, changes his place of residence from one precinct to another within the county in which registered, may, at any time up to thirty (30) days before any election, make application for transfer of such registration before any registration officer in

writing, directed to the county clerk of the county in which such elector is registered. The county clerk, upon receipt of such application shall remove the original affidavit of registration of such elector from such files and registration record, and place the same in the binder or registration record of the precinct or election district to which such elector requested to be transferred, with a notation on such affidavit of such transfer, and said county clerk shall thereupon file said application for transfer in a special binder for that purpose. Notation of such transfer shall likewise be made on the duplicate of such affidavit. Provided, that a transfer of registration may be made by the county clerk of any registrant in a voting division within, or partially within a municipality until five (5) days prior to any municipal election; but no transfer of registration shall be made within such voting divisions during the five (5) day period next preceding such a municipal election." (Emphasis ours)

The first sentence, as underlined, specifically has reference to transfers of registration from one precinct to another within the same county. Such may be accomplished at any time "up to thirty days before any election". The language of the proviso, however, speaks of "a voting division within a municipality. . ." In view of the assumed fact that the transfer contemplated by your question is a change of **precincts**, and not merely voting divisions within a given municipality, it must be concluded that the thirty (30) day requirement prevails.

Your fourth and final question, in our opinion, is answered by reference to the provisions of Sec. 3-2-19 (PS), as amended in 1955:

"The county clerk shall receive affidavits of registration at all times **except that he shall close registration at five (5) o'clock P.M. on the thirtieth day preceding any election at which the registration books are to be furnished to the judges of election and shall reopen such registration on the Monday following such election.** During the period when registration is closed, the county clerk may receive affidavits of registration and other documents pertaining thereto but shall not file the same in the registration books until such time as registration is reopened at which time the triplicate affidavit of registration shall be mailed to the registrant at the address shown by his registration affidavit." (Emphasis ours)

As expressly stated, receipt of registration affidavits will cease at five (5) o'clock P.M. on the thirtieth day preceding any election. (Opn. 58-40) supra. This doesn't mean 5:30 P.M. on the twenty-ninth day. The 1955 amendment added the last sentence which spells out the procedure for handling affidavits received during the period in which registrations are closed.

Accordingly, it is our opinion that affidavits received and filed as above indicated in question 4 is improper and further, that such procedure and acts are void and establish no right in the signers of said affidavits to vote in a municipal election to be held within thirty days.