

Opinion No. 61-132

December 21, 1961

BY: OPINION OF EARL E. HARTLEY, Attorney General L. D. Harris, Assistant Attorney General

TO: Mrs. Betty Fiorina, Secretary of State, Capitol Building, Santa Fe, New Mexico

QUESTION

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Does Section 3-3-30, N.M.S.A., 1953 Compilation (P.S.), allowing assistance to voters in marking ballots apply where voting machines are used?

CONCLUSION

Yes.

OPINION

ANALYSIS

With reference to Attorney General's Opinion No. 5897, which was written February 3, 1954, wherein your question was answered in the affirmative, we see no reason to change that opinion.

Section 3-3-30, N.M.S.A., 1953 Compilation (P.S.), provides for assistance to electors who declare to the judges of election that they are unable to mark the ballot because of blindness, defective eye-sight, other physical disability, or because they cannot read either the English or Spanish language and any of these provisions prevent their marking the ballot. The elector may be accompanied in the polling place by the two poll clerks and one person of his own selection.

Section E, of the above statute might create some conflict as this section provides that the affidavit, necessary to be executed by the elector to receive assistance, shall be deposited in the ballot box and when the box is opened the affidavits shall be placed in order according to the serial number, fastened or tied together and placed back in the box. This section further provides that the duty shall be mandatory. The question is how can affidavits be placed in a ballot box when a voting machine is utilized and therefore, due to the fact that this duty can not be performed, does it prevent the elector from receiving assistance?

Section 3-3-24, N.M.S.A., 1953 Compilation, provides that all other laws relating to the conduct of elections or primary elections shall apply, so far as practicable. Obviously the

section directing the affidavit to be deposited in the ballot box is not only not practicable, but is impossible to apply.

We conclude that this does not prevent assistance but suggest that steps be taken to preserve affidavits as that is the obvious intent of Section "E". There could be some conflict when one reads Section 3-4-16, N.M.S.A., 1953 Compilation (P.S.), but a careful analysis shows that this section concerns instructions to voters as to the use of the voting machine and further provides that after the instructions the voter will close the curtains and vote as an unassisted voter. This statute using the term "unassisted" implies the exception in the case a voter needs assistance, and does not therefore attempt to prevent assistance to the voter and the actual marking of his ballot when using the voting machine.

We further note that Section 3-4-2 (b), 1953 Compilation, discusses the requirements of voting machines and provides that there shall be absolute secrecy when the voter is casting his ballot, except as to a voter who is being assisted in voting as prescribed by law. We see then that even in the requirements of a voting machine legal rights to assistance is recognized.

The election laws are designed to allow an elector to cast his vote without any interference and they are not designed to prevent anyone, regardless of their physical condition or education, from voting. This office sees no conflict whatever in our existing law, and we conclude that a voter may obtain assistance as provided in the statute when casting his vote by means of a voting machine as well as a paper ballot.