

Opinion No. 62-34

February 9, 1962

BY: OPINION OF EARL E. HARTLEY, Attorney General Thomas A. Donnelly, Assistant Attorney General

TO: Mr. Miguel C. Fietze, Jr., County Clerk, Dona Ana County Las Cruces, New Mexico

QUESTION

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Is it necessary that all precincts exceeding 600 voters be broken into separate precincts if additional voting machines are made available.

CONCLUSION

See analysis.

OPINION

ANALYSIS

The answer to your question stated above is governed by the

provisions of Sec. 3-2-1 and Sec. 3-4-28, N.M.S.A., 1953 Comp. (PS). Section 3-2-1, N.M.S.A., 1953 Comp., (PS), provides in part as follows:

"At a meeting to be convened no later than the first Monday in December of every off-numbered year, each board of county commissioners shall, by order entered of record, divide every precinct and voting division in their respective counties where more than six hundred [600] votes were cast at one [1] polling place at the last preceding general election into two [2] or more election districts for voting purposes only, and shall define the boundaries of each such election districts; and each such district shall be so made that no polling place shall be required to accommodate more than six hundred [600] voters. Such election districts shall be designated respectively as election district A, B, C, etc., of the precinct divided.

The county commissioners shall, by the same order, designate the polling place of each precinct and election district; and the boundaries and places shall be so designated as to be most convenient to the majority of the electors. In the interest of economy, the county commissioners may, in their discretion, consolidate any precinct or voting division where the total vote cast in the preceding general election was less than one hundred [100] ballots, with the nearest and most accessible precinct or voting division;

Provided, no consolidation shall be made where the aggregate vote in the last general election in the election divisions thus to be consolidated exceeded six hundred [600] ballots. Each board of county commissioners may meet at any other time not less than four [4] months before each election to divide or abolish precincts or election districts or to change the boundaries thereof or polling places therein.

No precinct or election district shall be abolished or the boundaries or polling place therein changed less than four [4] months before each election, except by order of court in a proceeding as hereinafter provided.

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The provisions of this section as to the duties of county commissioners shall be mandatory, and if any board of county commissioners shall fail or neglect to comply therewith, any qualified elector may without cost file a petition for mandamus in the district court. A hearing in said matter shall be promptly afforded by the district court, and if the allegations of the petition are sustained, the district court shall make an order requiring the board of county commissioners to comply forthwith with said provisions. In such event, all cost of the proceeding shall be taxed against the county commissioners and recovered from the commissioners on their official bond in an action which shall be forthwith brought by the district attorney. The willful violation by any board of county commissioners of the mandatory provisions of this section shall be a misdemeanor and upon conviction shall be punishable by a fine not exceeding five hundred dollars (\$ 500) or by imprisonment not exceeding ninety [90] days, or both."

Section 3-4-28, N.M.S.A., 1953 Comp. (PS), provides in full as follows:

"Based on the official canvass of the state canvassing board, the county commissioners of each county shall provide voting machines for use in general and primary elections according to the following schedule:

When the total number of ballots cast in any precinct or voting district in the previous general election amounted to:

- 201 but not more than 500
1 voting machine
- 501 but not more than 1000
2 voting machines
- 1001 but not more than 1500
3 voting machines
- 1501 but not more than 2000
4 voting machines

However, within the provisions of this act [3-4-27 to 3-4-33], the commissioners of any county may acquire voting machines in excess of the number set out above, or may acquire voting machines for precincts or voting districts casting less than 201 total ballots in the precincts or voting districts casting less than 201 total ballots in the previous general election, when so authorized by the state board of finance.

Voting machines provided for use in any precinct or voting district for general and primary elections shall also be used in any other election if the authority calling the particular election determines that the use of such machines is advisable and so directs."

Upon first impression it would appear that the 1961 legislative enactment of the Compulsory Voting Machine Act, Chapter 127, Laws 1961, and particularly the provisions of Sec. 3-2-28, N.M.S.A., 1953 Comp., contained therein, apparently fail to take cognizance of the earlier statutory provisions contained in Sec. 3-2-1, N.M.S.A., 1953 Comp., restricting the number of voters which any polling place may accommodate. However, the New Mexico Supreme Court has stated that statutes relating to the same subject matter should be construed together, if such can be done without violating the plain language of both statutes, and in such a manner so as to give effect to both statutes. **State ex rel Abercrombie v. Dist. Court of Fourth Judicial Dist.**, 37 N.M. 407, 24 P. 2d 265; **State v. Moore**, 40 N.M. 344, 59 P. 2d 902; **Niblack v. Seaberg Hotel Co.**, 42 N.M. 281, 76 P. 2d 1156; **Vermejo Club v. French**, 43 N.M. 45, 85 P. 2d 90.

Similarly, repeals by implication are not favored, and a later statute will not generally be construed to effect a repeal of an earlier statute, except where the provisions of the earlier statute are indisputedly irreconcilable with the provisions of the later legislation. **State v. Valdez**, 59 N.M. 112, 279 P. 2d 868; **State v. Herring**, 57 N.M. 600, 261 P. 2d 442; **Mendoza v. Acme Transportation & Storage Co.**, 65 N.M. 32, 340 P. 2d 1080.

We believe that upon a close reading of the provisions of Sec. 3-2-1 and 3-4-28, N.M.S.A., 1953 Comp., both sections may be read together in pari materia and in such a manner so as to give effect and reconcile the provisions of both statutes.

Reading the provisions of Sec. 3-2-1 together with the provisions of Sec. 3-4-28, N.M.S.A., 1953 Comp., it is our conclusion that each precinct must be divided into separate election districts for purposes of voting, if such precinct possesses more than 600 voters residing therein. In each precinct or election district no polling place may be required to accommodate more than 600 voters.

In determining the number of voting machines which the board of county commissioners are required to acquire for use within each county, the board must look to the total number of ballots cast in each precinct or voting district within the county in the previous general election and acquire at least one voting machine for each five hundred ballots cast within each such precinct or voting district in the last general election.

Section 3-4-28, N.M.S.A., 1953 Comp., has specific application to the number of voting machines which must be obtained and supplied by the board of county commissioners for use in general and special elections. However, Sec. 3-2-1, N.M.S.A., 1953 Comp., must be followed as to the number of persons which any polling place may be required to accommodate.

As we interpret the above statutory language more than one voting machine may be placed for use at any one polling place within a precinct or election district, but no polling place may be required to accommodate more than 600 votes in any event.

Thus, in construing the provisions of Sec. 3-2-1 and 3-4-28, N.M.S.A., 1953 Comp., together, it is apparent that Sec. 3-2-1, N.M.S.A., 1953 Comp., specifically requires that the board of county commissioners so locate polling places that no polling place located within any precinct or election district may be required to accommodate more than 600 voters. Section 3-4-38, N.M.S.A., 1953 Comp., is determinative of the number of machines which the board of county commissioners must acquire for use at any general or special election, but does not repeal by implication the provisions of Sec. 3-2-1, N.M.S.A., 1953 Comp., limiting the number of voters which any polling place may be required to accommodate.

Since the question as to the interrelationship of the statutes discussed above has only now been presented to this office, it is understandable if, up to this time, the requirements of Sec. 3-2-1, supra, have sometimes been thought no longer to be in effect.