

Opinion No. 64-131

October 22, 1964

BY: OPINION OF EARL E. HARTLEY, Attorney General Oliver E Payne, Assistant Attorney General

TO: Mrs. Alberta Miller, Secretary of State, State Capitol Santa Fe, New Mexico

QUESTION

QUESTIONS

1. May a county clerk affix to the voting machine a rubber stamp bearing a write-in candidate's name if the candidate supplies the stamps?
2. May a write-in candidate have rubber stamps bearing his name made available at each polling place at his expense?

CONCLUSIONS

1. No.
2. Only if such rubber stamps are made available at least 50 feet from the polling place.

OPINION

ANALYSIS

In this State party candidates are selected by the voters of their particular party in a closed primary election. After they have been so selected their names are printed on the ballot and ballot labels for the general election. Sections 3-3-7 and 3-4-7, N.M.S.A., 1953 Compilation. However, in order that the voter may fully and freely exercise his right of franchise, our statutes provide that a voter may write in the name of any person for any office. Sections 3-3-6 and 3-4-7, N.M.S.A., 1953 Compilation.

This office has previously held that printed stickers and rubber stamps may be used to write in a person's name. The question now arises where such stickers or rubber stamps are to be made available.

Section 3-4-11, N.M.S.A., 1953 Compilation provides that voting machines are to be delivered to each polling place where they are required by law to be used along with **all registration lists and necessary election supplies**. Section 3-3-25, N.M.S.A., 1953 Compilation specifically enumerates the supplies to be delivered to each precinct or voting division where paper ballots are used and also provides that "Comparable supplies for use with voting machines, as prescribed by law, shall likewise be delivered

by the county clerk to the judges of election in every precinct or voting division where voting machines are to be used." Rubber stamps bearing a write-in candidate's name are not necessary election supplies. Pens and indelible pencils are supplied and may be used by any person wishing to write in a person's name.

Public officials have only such powers as have been granted to them by law and we find nothing which would authorize a county clerk to affix rubber stamps to a voting machine. On the contrary, the statute enumerates the supplies which are to be delivered to the election officials.

Your second question is closely related to the first question and asks whether such rubber stamps may be made available at each polling place.

In our opinion Section 3-3-20 (20), N.M.S.A., 1953 Compilation requires that the rubber stamps be made available at least 50 feet from the polling place. This section provides that "no electioneering shall be done by any person at the polling place or within 50 feet thereof." A rubber stamp bearing a person's name or a sticker with a person's name printed on it is just as much campaign material as is a candidate's card or poster, and the latter cannot be posted or made available within 50 feet of the polling place. These rubber stamps are in the same category as a marked sample ballot. A voter is allowed to carry a marked sample ballot to the voting booth whether filled out by him or someone else. Section 3-3-20 (19), N.M.S.A., 1953 Compilation. But if it was marked by someone other than the voter, it must be given to the voter at least 50 feet from the polling place. The same is true with rubber stamps.

We would point out that this requirement imposes no hardship on a write-in candidate. People wishing to vote for him need only write his name in the space provided. Or they can pick up the rubber stamp 50 feet from the polling place.