

Opinion No. 64-133

October 30, 1964

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

TO: Mrs. Bonnie Lane, County Clerk, San Juan County Aztec, New Mexico

QUESTION

QUESTIONS

- (1) If the right of a voter to vote is challenged must he be forced to use a paper ballot?
- (2) If a challenge is upheld by the election judges is the challenged voter entitled to cast his ballot regardless of the ruling?
- (3) May the newspapers and radio media be permitted to have the voting results from the precincts or voting divisions at the close of the polls at 7 P.M. on election day?

CONCLUSIONS

- (1) No.
- (2) See Analysis.
- (3) See Analysis.

OPINION

ANALYSIS

Several statutory sections bear upon the first question presented. Section 3-3-13, N.M.S.A., 1953 Compilation, Paragraph A., sets out in part that when an elector presents himself at the polls to vote, the election officials shall ascertain whether such elector is registered, and "a challenge may be interposed by an election judge, clerk or by the party challenger permitted within the polling place under the provisions of the Election Code."

Section 3-3-14, N.M.S.A., 1953 Compilation provides that a challenger may inspect the registration books for the purpose of determining whether he desires to interpose a challenge, or to determine whether any challenge interposed is valid. This section also states that a challenger shall "also have the right from time to time to inspect the poll books and registration books for the purpose of determining whether proper entries in accordance with this statute are being made by the election officials."

Section 3-3-20, N.M.S.A., 1953 Compilation, sets out in part as follows:

"Do not permit any person to vote unless his name appears in the book of bound affidavits of registration furnished by you by the county clerk, **provided, however, should any person appear before you and present a triplicate affidavit of registration, which appears to be valid upon its face, and the person asserts his right to vote, then in such case the person shall be allowed to vote as any other voter.** . . . For the triplicate to be valid it must meet all the following requirements:

(a) affidavit must have been issued in the county where the election is being held and no other;

(b) if voter registered after June 30, 1955, the affidavit must bear the signature or stamp of the county clerk, registration clerk or member of the board of registration. The signature or stamp is not required if the voter registered before June 30, 1955; and

(c) voter's name must not appear on the list (purge list) of cancelled affidavits in back of registration books. If voter's name does appear on the list, this person must not be allowed to vote.

Do not permit any person under the age of twenty-one years, any idiot, insane person, persons convicted of a felonious crime unless restored to civil rights or person confined in any county jail or penal institution, to vote. Do not permit any voter to vote except in the booth." (Emphasis supplied).

Such section, quoted supra, also further provides that "a challenge may be interposed by any judge, clerk of election or a legally constituted challenger. A challenge may be interposed because a voter is not registered or is otherwise not qualified, or where the elector is registered, a challenge may be interposed for any disqualification. In every case where a challenge is interposed, the poll clerk shall enter in each poll book under the heading "Notation" the word "Challenged," the reason given for the challenge and the ruling of the judges thereon. If the challenge is not upheld by the election judges, the voter is allowed to vote and his ballot number entered in the appropriate space in the poll book and on the affidavit of registration."

Section 3-4-14 and 3-4-25, N.M.S.A., 1953 Compilation provide for challengers when voting machines are being utilized.

We think from a careful study of the election code and the above cited statutory provisions that if voting machines are being used at a precinct or voting division and a voter presents himself at such voting location to vote, and is challenged by an authorized challenger, that such elector must be permitted to vote and use such voting machine, if the elector meets the requirements set out in Section 3-3-20, N.M.S.A., 1953 Compilation, supra. Thus, if the person seeking to vote presents a triplicate affidavit of registration which appears to be valid upon its face, or if his name is upon the registration books for such voting location, and the person is not otherwise

disqualified as set forth in Section 3-3-20, supra, the person must be permitted to vote using the voting machine. If paper ballots only are used at such location, then the person is entitled to vote by paper ballot. The election judges must pass upon the validity of any challenge interposed, but if the person is not disqualified under the above statute -- then he enjoys the same privilege of voting as any other voter.

Your second question inquires whether or not a person whose right to vote is challenged is entitled to cast his ballot regardless of the election judge's ruling. As discussed under our answer to your first question, we believe that the election judges must pass upon the right of a challenged elector's right to vote, but a challenged elector is to be given the right to vote in every instance where his name appears upon the registration books for such voting location or where he presents a triplicate affidavit of registration which appears valid upon its face, **and where the person is not otherwise disqualified as provided in Section 3-3-30, quoted supra.** Where the person is entitled to vote he must be permitted to use the same means of voting as any other voter in such polling location.

Thirdly, you have inquired as to whether newspaper and radio media may be given the voting results from polling locations at the time of the closing of such polling places at 7 o'clock P.M., on election day.

By law, after the polls are closed on election day, the votes are to be counted as set forth in Sections 3-6-1 and 3-3-20, N.M.S.A., 1953 Compilation, and the results are to be tallied and delivered immediately to the county clerk. Section 3-3-20, N.M.S.A., 1953 Compilation sets out that no persons are permitted to be present during the counting and tallying of the ballots except the judges and clerks of election, counting judges and clerks and two representatives selected from each political party represented on the ballot as provided by law.

We see no reason why, however, if notations are made as to the number of votes cast in such precinct or voting division by the persons authorized to perform such vote counting or to be present, that such results cannot be given to the newspapers or radio media, as long as it is borne in mind that such notations are unofficial in nature and bear no official authenticity, since only the official tabulations entered upon the election certificates and other election books are controlling.