

Opinion No. 67-26

February 15, 1967

BY: OPINION OF BOSTON E. WITT, Oliver E. Payne

TO: Edward S. Phinney, Chairman Bernalillo County Board of Registration 9320 Euclid Avenue, N. E. Albuquerque, New Mexico

QUESTION

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1. Is Laws 1965, Chapter 128, Section 2 violative of the Constitution?
2. Since Article VII, Section 1 of the constitution requires a voter to reside in his precinct for thirty days next preceding the election, is Laws 1965, Chapter 128, Section 2 unconstitutional in that the ballot is not received in the precinct?
3. Would an absentee ballot for **any** registered qualified elector of this state **only** for Federal elective officers be constitutional.

CONCLUSIONS

1. It can operate in such a manner as to be so.
2. No.
3. Yes, if the present Voting Assistance Law is constitutional.

OPINION

{*32} ANALYSIS

Article VII, Section 1, New Mexico Constitution provides in pertinent part as follows:

"Not more than two judges of election shall belong to the same political party at the time of their appointment."

Laws 1965, Chapter 128, Section 2, compiled at Section 3-14,-28.1, a portion of the Voting Assistance Act implementing the Federal Voting Assistance Act of 1955 provides that:

"The members of the board of county commissioners for the county shall serve ex-officio as special absentee ballot judges without additional compensation."

When all three members of the board of county commissioners are members of the same political party, there are more than two judges of election belonging to the same political party. However, you state that you are working on legislation for a legislator and this matter could easily be corrected by remedial legislation.

We do not believe that the Voting Assistance Act violates Article VII, Section 1 in the manner mentioned in your second question. It was held in **State ex rel. Board of County Commissioners**, 59 N.M. 9, 277 P.2d 960 that the above section of the Constitution makes it mandatory that voting places be provided in each precinct because a vote cast by one outside his precinct is void. But the Voting Assistance Act in effect provides that the absent voter is voting in his precinct by providing in Section 3-14-16, N.M.S.A., 1953 Compilation that ". . . it shall be the duty of the county clerk to determine the precinct that the absent persons are offering to vote in."

Based on the presumption of constitutionality and the Federal Voting Assistance Act of 1955, we stated in Opinion No. 57-223 that the New Mexico Voting Act was constitutional. If additional categories of registered qualified electors were included thereunder, {33} that would seem to change the constitutionality of the Act providing for absentee voting for Federal elective officers.

Deputy Attorney General