

Opinion No. 68-49

May 15, 1968

BY: OPINION OF BOSTON E. WITT, Attorney General

TO: Mrs. Ernestine D. Evans Secretary of State State Capitol Building Santa Fe, New Mexico

QUESTION

QUESTION

Can a county clerk appoint a deputy county clerk from his own office, who is receiving a salary as a deputy county clerk and who is also going to be a candidate for office in the 1968 primary election, to deliver absent voter ballots as provided for in Section 13, Subsection B, Chapter 55, Laws of 1968?

CONCLUSION

Yes.

OPINION

{*83} **ANALYSIS**

Section 13, Subsection A and B, Chapter 55, Laws of 1968 provide as follows:

A. At least thirty days before any election at which absent voter ballots are to be cast, the county clerk shall establish routes within the county for the delivery of absent voter ballots to election officials of each voting division in the most proper and economical manner.

B. Each county clerk may appoint special deputy county clerks, who need not be county employees, in the same number as routes established by him for delivery of absent voter ballots. Each special deputy clerk shall, before beginning his duties, take and subscribe an oath as follows:

OATH OF SPECIAL DEPUTY COUNTY CLERK (To be administered by the county clerk)

I solemnly swear that I will faithfully and impartially discharge the duties of my office as special deputy county clerk for the present election to the best of my ability, so help me God.

—

Special Deputy County Clerk Subscribed and sworn to before me on ____, 19__.

County Clerk

We have found nothing in the statutes that would prevent a person described in your question from acting as a special deputy under the quoted section. However, it is our opinion that such a special deputy could not receive his or her salary for that day from the county. Subsection C of Section 13, Chapter 55, Laws of 1968 provides:

Special deputy county clerks shall receive the same compensation as provided in the Election Code for compensation of messengers.

You will note that the section quoted is mandatory and for this reason it is our opinion that this would be the only compensation payable to a special deputy.

Even though we have concluded that a person described in your question could be appointed as a special deputy, we feel we should draw your attention to the prohibition in Section 3-3-20, N.M.S.A., 1953 Compilation (P.S.). This prohibition provides as follows:

{*84} In our opinion, electioneering encompasses an attempt on the part of an individual or candidate to persuade or influence voters to vote for a particular candidate, party or proposition, and that such an attempt when made within one hundred fifty feet of the polling place on an election day while votes are being cast, constitutes electioneering in violation of § 16-903, subsection 1 A.R.S.

In conclusion, we find no legal prohibition against appointing a person as described in your question but any such person appointed would have to be most careful to avoid the possibility of electioneering at the polls.

By: Roy G. Hill

Deputy Attorney General