

Opinion No. 73-13

February 1, 1973

BY: OPINION OF DAVID L. NORVELL, Attorney General

TO: Mr. C. Emery Cuddy, Jr. General Counsel Department of Education Education Building Santa Fe, New Mexico 87501

QUESTIONS

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Under the provisions of Section 77-5-9.1, N.M.S.A., 1953 Comp., may the Board of County Commissioners charge a school district twenty dollars (\$ 20.00) for the use of voting machines in a school district election, and also charge a separate fee for the programming and/or setting up of each machine, or is the twenty dollar fee the maximum the commissioners may charge for rental, programming, set-up, or other activity concerning voting machines?

CONCLUSION

Section 77-5-9.1, N.M.S.A., 1953 Comp. **only** allows the Board of County Commissioners to charge a school district twenty dollars (\$ 20.00) for the use, programming and/or setting up of each voting machine to be used in school district elections.

OPINION

{*23} ANALYSIS

The 1971 Legislature determined that the use of voting machines in school district elections should be mandatory and thereby amended Section 77-5-9(E), N.M.S.A., 1953 Comp. (1971 P.S.) to read as follows:

"Voting machines **shall** be used in lieu of paper ballots for the recording of votes cast in a school district election." (Emphasis added.)

Pursuant to this requirement, the Legislature provided the means by which school districts could obtain "a sufficient number of voting machines necessary to conduct the election in those polling places located within that county." Section 77-5-9.1, N.M.S.A., 1953 Comp. (1971 P.S.):

"County to furnish voting machines. -- A. The board of county commissioners of the county in which any portion of the school district is located shall make available to the school district for use in the school district election a sufficient number of voting

machines necessary to conduct the election in those polling places located within that county. **The board of county commissioners may furnish such voting machines without charge, or if a charge is made it shall not exceed twenty dollars (\$ 20.00) for the use of each voting machine.**

B. The school district shall be responsible for the protection and care of such machines during the period they are in the custody of the school district.

C. The county voting machine technician and the state voting machine supervisor shall, upon request of the superintendent of schools, advise the school district on the proper procedure for the setting up and use of the voting machines." (Emphasis added.)

Your question involves a determination of whether subsections B and C of the above law allow the Board of County Commissioners to charge a fee in excess of the twenty dollars (\$ 20.00) "for the use of each voting machine," such excess fee attributed to services rendered by the county voting machine technician necessary for "setting up and use of the voting machine."

Section 4-2-7, N.M.S.A., 1953 Comp. (1971 P.S.), creates in the Bureau of Elections the position of "state voting machine supervisor . . . who shall be knowledgeable in the mechanical operation, repair and maintenance of voting machines used in this state." The duties of the state voting machine supervisor include providing assistance to the counties in the repair, maintenance, care and proper use of voting machines owned by the counties. Section 4-2-7, **supra**. Because the mechanics of the machine are somewhat technical, each county has found it necessary to find an individual who acts as voting machine technician, caring for the complexities of the machines. This person is trained by the state voting machine supervisor.

The authority by which the counties have both purchased voting machines and contracted with or employed individuals to act as voting machine technicians is found in Section 3-9-6 and 3-9-8 to 13, N.M.S.A., 1953 Comp. (1972) Interim Supp.) The State thus provides the means whereby individuals may develop expertise in the area of voting machine mechanics. This expertise may then be utilized by the counties as an aid in fulfilling obligations in regard to a free franchise.

Further, the State has provided a relatively simple method by which the county can purchase necessary voting machines -- a lease purchase agreement with the State Board of Finance, Sections 3-9-9 to {24} 12, **supra**, finance by a state voting machine revolving fund. With the financing of the capital cost of the machines arranged, it seems obvious that the Legislature would not consider the authorization for payment for use of these machines at Section 77-5-9.1(A), **supra**, as a charge for any service other than programming and/or setting up of each machine and any other necessary technical assistance required and requested by the Superintendent of Schools pursuant to Section 77-5-9.1(C), **supra**.

We therefore conclude that Section 77-5-9.1, **supra**, only allows the Board of County Commissioners to charge a school district twenty dollars (\$ 20.00) for the use, programming and/or setting up of each voting machine to be used in school district elections.

By: Leila Andrews

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