

## Opinion No. 74-39

November 26, 1974

**OPINION OF:** DAVID L. NORVELL, Attorney General

**BY:** W. Royer, Assistant Attorney General

**TO:** H.L. Willoughby, Superintendent Aztec Municipal Schools 500 East Zia Aztec, New Mexico 87410

### QUESTIONS

Does Section 3-6-7, NMSA, 1953 Comp. (1973 Supp.) require that the absentee ballots for school district elections be printed thirty-five (35) days prior to the election?

### CONCLUSION

No.

### ANALYSIS

{\*81}

Sections 77-5-21 through 77-5-33, NMSA, 1953 Comp. (1973 Supp.) have granted voters the privilege of absentee voting in school district elections. Pursuant thereto, Section 77-5-27, **supra**, provides that the superintendent of the school district shall have sequential numbered absentee ballots prepared for the school district election. The absentee ballots are to be prepared in **substantially** the same manner as the absentee ballots prepared under the Election Code. Section 3-6-7, NMSA, 1953 Comp. (1973 Supp.). The Election Code provides that the absentee ballots must be printed at least thirty-five days prior to the election. You have asked whether the absentee ballots for school district elections must be prepared thirty-five (35) days prior to the election.

The candidate filing and withdrawal provisions must be examined in order to determine when the absentee ballots must be printed under the School District Election Code. Section 77-5-6, NMSA, 1953 Comp. (1973 Supp.) provides that candidates may file a declaration of candidacy at any time between the first publication of the resolution calling for the election and 5:00 P.M. on the thirty-fifth (35th) day preceding the election. Section 77-5-7, NMSA, 1953 Comp. provides that any candidate may withdraw his candidacy until 5:00 P.M. on the twenty-fifth (25th) day preceding the election. The superintendent **shall not** place the name of any withdrawn candidate on the ballot. Section 77-5-7B, **supra**. Therefore, it would be impossible for the absentee ballots to be printed thirty-five (35) days prior to the election because the names of the candidates cannot be ascertained until twenty-five (25) days prior to the election.

We must caution you, however, that Section 77-5-25F, **supra**, requires that {\*82} absentee ballots be mailed to federal qualified electors not later than twenty (20) days preceding the election. Therefore, the absentee ballots must be printed no later than the twenty-first (21st) day preceding the election in order to allow sufficient time for processing in your office.

As we have noted, Section 77-5-27, **supra**, provides that the absentee ballots be prepared **substantially** in the same manner as under the Election Code. The legislature's use of the word "substantially" is meaningful in the present inquiry. Since it is impossible to ascertain the names of the candidates until the twenty-fifth (25th) day preceding the election, it is our opinion that substantial compliance with the Election Code is met by printing the absentee ballots in the form prescribed under the Election Code between the twenty-fourth (24th) day and twenty-first (21st) day preceding the election.