

## Opinion No. 75-27

April 14, 1975

**OPINION OF:** TONEY ANAYA, Attorney General

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

**TO:** The Honorable Ernestine D. Evans Secretary of State Legislative-Executive Building Santa Fe, New Mexico 87503

### FACTS

The City of Portales, New Mexico will hold a local option election relating to the sale of alcoholic beverages on April 15, 1975, pursuant to Section 46-3-1, NMSA, 1953 Comp. The Municipal Clerk has determined that several voters are registered showing a post office box as the legal residence of the voter. Pursuant to such findings, the Municipal Clerk has issued instructions to the precinct boards that require the precinct boards to verify the legal residence of all such voters to assure they are residents of the City of Portales. Portales is within the County of Roosevelt, an optional registration county.

### QUESTIONS

May the precinct boards require all voters who have listed a post office box number as their legal residence to present additional evidence of residency prior to being allowed to vote?

### CONCLUSION

No, see Analysis.

### ANALYSIS

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A local option liquor election is held pursuant to the Municipal Election Code, Sections 14-8-1, **et seq.**, NMSA, 1953 Comp. See Section 46-3-1(C), NMSA, 1953 Comp. Section 14-8-5(C), **supra**, requires the Municipal Clerk to obtain the registered voter list and signature roster of all precincts located wholly or partially within the boundaries of the municipality from the County Clerk. The registered voter list so obtained constitutes the registration list for the municipal election. Section 14-8-10.1, **supra**, requires that municipal elections be conducted in the manner provided in the Election Code, Section 3-1-1, **et seq.**, NMSA, 1953 Comp.

The registration of electors in Roosevelt County is governed by the provisions of Section 3-4-1, **et seq.**, and 3-5-1, **et seq.**, **supra**. An individual must apply to a

registration officer for registration. The registration officer is required to complete the affidavit of registration (Section 3-4-18, **supra**) on forms supplied by Secretary of State and in accordance with the instructions promulgated by the Secretary of State (Sections 3-2-1, 2-2-2(C), and 3-2-3(A), **supra.**) Thus, the burden of ascertaining correct information is placed upon the registration officers.

In completing the affidavit of registration, the registration officer is required to specifically list whether the elector is a resident {<sup>87</sup>} of a municipality or a rural resident. This designation is important as it determines the precinct of the voter. The instruction issued to registration officers by the Secretary of State provides:

5. The information in this section is divided into URBAN and RURAL addresses and determines the registrants voting precinct.

### **URBAN ADDRESSES**

If the registrant resides inside the limits of municipality, type or print the **RESIDENCE** address of the applicant. Be sure to enter the complete address and indicate whether it is a street, "St." avenue "Av.", road "Rd.", lane "Ln.", circle, "Cr.", boulevard, "Blvd.", place, "Pl.", drive, "Dr.", way, "Wy." dormitory, "Dorm.", Fraternity or Sorority House and the apartment or mobile home number, if applicable.

Thus, the instructions are specific and the information is complete as to the address of the voter. Once accepted,

A valid original affidavit of registration in the registration binder is prima facie evidence of being a voter of the precinct. Section 3-12-10, **supra.**

The affidavits of registration, after acceptance by the County Clerk, then become the voter list of the County. In optional registration counties, the machine prepared voter list and signature roster are used in lieu of the bound original affidavits and pollbooks. Section 3-5-6, **supra.** Such voter list and signature roster must contain the voter's name, residence, affidavit of registration number or social security number, party affiliation, if any, and the precinct of residence. Section 3-5-7, **supra.**

From the foregoing analysis, it is our opinion that the precinct boards may not require additional evidence of residence from a voter. Once the affidavit is accepted, the information as to residence and precinct are established as conclusive proof that the voter is a resident of that precinct.

We are informed that many of the voters in question are students of Eastern New Mexico University and that additional information is available on the affidavit of registration and the voter's lists, such as P. O. Box XXX (ENMU) or P. O. Box XXX (Dorm.) Since the Campus of ENMU is entirely within the City of Portales, it is our opinion that such information is prima facie evidence that the voter is a resident of the City and that the precinct board cannot require additional proof of residency.

However, we might add a word of caution with respect to the use of challenges. Sections 14-8-10.1 and 14-8-11, **supra**, provide that the precinct board and challengers for municipal elections must conduct themselves in the manner provided in the Election Code. A challenge may be interposed by either a member of the precinct board or by a challenger on the basis that the person presenting himself to vote is not a qualified elector, **i.e.**, is not a resident of the municipality. Section 3-12-37 (C), **supra**. It is our opinion that the use of a challenge under this section cannot be made for all individuals who have a post office box listed as a residence. A challenge under this section must come from the personal knowledge of the challenger because the voter is entitled to the prima facie evidence of the voter list that he is indeed a resident. A challenger must bear the burden of proof that {\*88} the voter does not in fact reside within the municipality. Any other result would place an additional burden upon the voter that by a statute he need not bear. Therefore, challenge and disposition of challenges under Section 3-12-39, **supra**, must be made upon adequate knowledge of the challenger.